## 1nc

### Off

states

#### The fifty states and relevant subnational entities should

#### prohibit the refusal to license climate mitigation and adaptation technologies as an anticompetitive business practice.

* finance any expenses by creating antitrust revolving funds and by increasing NAAG coordination

#### and act in uniformity

#### State coordination solves---multistate litigation and enforcement bureaus overcome deficits.

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)

### Off

Adv cp

#### The United States federal government should substantially increase funding for carbon capture and **adopt a $50 a ton tax on carbon, rising to $135 a ton by 2030.**

#### Warming is inevitable without a carbon tax and carbon capture—key to global economy shift and transition from coal.

Davenport 18

[Coral, energy and environmental policy writer, *NYT*, “Major Climate Report Describes a Strong Risk of Crisis as Early as 2040,” 10/07/2018, <https://www.nytimes.com/2018/10/07/climate/ipcc-climate-report-2040.html>, accessed 10/07/2018, AMS]

INCHEON, South Korea — A landmark report from the United Nations’ scientific panel on climate change paints a far more dire picture of the immediate consequences of climate change than previously thought and says that avoiding the damage requires transforming the world economy at a speed and scale that has “no documented historic precedent.” [The report](http://www.ipcc.ch/report/sr15/), issued on Monday by the Intergovernmental Panel on Climate Change, a group of scientists convened by the United Nations to guide world leaders, describes a world of worsening food shortages and wildfires, and a mass die-off of coral reefs as soon as 2040 — a period well within the lifetime of much of the global population. The report “is quite a shock, and quite concerning,” said Bill Hare, an author of previous I.P.C.C. reports and a physicist with Climate Analytics, a nonprofit organization. “We were not aware of this just a few years ago.” The report was the first to be commissioned by world leaders under the Paris agreement, [the 2015 pact by nations to fight global warming](https://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html?module=inline). The authors found that if greenhouse gas emissions continue at the current rate, the atmosphere will warm up by as much as 2.7 degrees Fahrenheit (1.5 degrees Celsius) above preindustrial levels by 2040, inundating coastlines and intensifying droughts and poverty. Previous work had focused on estimating the damage if average temperatures were to rise by a larger number, 3.6 degrees Fahrenheit (2 degrees Celsius), because that was the threshold scientists previously considered for the most severe effects of climate change. The new report, however, shows that many of those effects will come much sooner, at the 2.7-degree mark. Avoiding the most serious damage requires transforming the world economy within just a few years, said the authors, who estimate that the damage would come at a cost of $54 trillion. But while they conclude that it is technically possible to achieve the rapid changes required to avoid 2.7 degrees of warming, they concede that it may be politically unlikely. For instance, the report says that heavy taxes or prices on carbon dioxide emissions — perhaps as high as $27,000 per ton by 2100 — would be required. But such a move would be almost politically impossible in the United States, the world’s largest economy and second-largest greenhouse gas emitter behind China. Lawmakers around the world, including in China, the European Union and California, have enacted carbon pricing programs. For instance, the report says that heavy taxes or prices on carbon dioxide emissions — perhaps as high as $27,000 per ton by 2100 — would be required. But such a move would be almost politically impossible in the United States, the world’s largest economy and second-largest greenhouse gas emitter behind China. Lawmakers around the world, including in China, the European Union and California, have enacted carbon pricing programs. Absent aggressive action, many effects once expected only several decades in the future will arrive by 2040, and at the lower temperature, the report shows. “It’s telling us we need to reverse emissions trends and turn the world economy on a dime,” said Myles Allen, an Oxford University climate scientist and an author of the report. To prevent 2.7 degrees of warming, the report said, greenhouse pollution must be reduced by 45 percent from 2010 levels by 2030, and 100 percent by 2050. It also found that, by 2050, use of coal as an electricity source would have to drop from nearly 40 percent today to between 1 and 7 percent. Renewable energy such as wind and solar, which make up about 20 percent of the electricity mix today, would have to increase to as much as 67 percent. “This report makes it clear: There is no way to mitigate climate change without getting rid of coal,” said Drew Shindell, a climate scientist at Duke University and an author of the report. The World Coal Association disputed the conclusion that stopping global warming calls for an end of coal use. In a statement, Katie Warrick, its interim chief executive, noted that forecasts from the [International Energy Agency](https://www.iea.org/), a global analysis organization, “continue to see a role for coal for the foreseeable future.” Ms. Warrick said her organization intends to campaign for governments to invest in carbon capture technology. Such technology, which is currently too expensive for commercial use, could allow coal to continue to be widely used. Despite the controversial policy implications, the United States delegation joined more than 180 countries on Saturday in accepting the report’s summary for policymakers, while walking a delicate diplomatic line. A State Department statement said that “acceptance of this report by the panel does not imply endorsement by the United States of the specific findings or underlying contents of the report.” The State Department delegation faced a conundrum. Refusing to approve the document would place the United States at odds with many nations and show it rejecting established academic science on the world stage. However, the delegation also represents a president who has rejected climate science and climate policy. “We reiterate that the United States intends to withdraw from the Paris agreement at the earliest opportunity absent the identification of terms that are better for the American people,” the statement said. The report attempts to put a price tag on the effects of climate change. The estimated $54 trillion in damage from 2.7 degrees of warming would grow to $69 trillion if the world continues to warm by 3.6 degrees and beyond, the report found, although it does not specify the length of time represented by those costs. The report concludes that the world is already more than halfway to the 2.7-degree mark. Human activities have caused warming of about 1.8 degrees since about the 1850s, the beginning of large-scale industrial coal burning, the report found. The United States is not alone in failing to reduce emissions enough to prevent the worst effects of climate change. The report concluded that the greenhouse gas reduction pledges put forth under the Paris agreement will not be enough to avoid 3.6 degrees of warming. The report emphasizes the potential role of a tax on carbon dioxide emissions. “A price on carbon is central to prompt mitigation,” the report concludes. It estimates that to be effective, such a price would have to range from $135 to $5,500 per ton of carbon dioxide pollution in 2030, and from $690 to $27,000 per ton by 2100. By comparison, under the Obama administration, government economists estimated that an appropriate price on carbon would be in the range of $50 per ton. Under the Trump administration, [that figure was lowered to about $7 per ton](https://www.nytimes.com/2018/08/23/climate/social-cost-carbon.html?module=inline).

### Off

Regulation cp

#### The United States federal government should prohibit the refusal to license climate mitigation and adaptation technologies as an anticompetitive business practice, and do the plan’s antitrust expansion as a regulation

#### 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

### Off

ptx

#### Biden slaps backs to pass infrastructure.

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 requires 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.

#### Quickly secures the vulnerable grid.

Carney ’21 [Chris, August 6; Senior Policy Advisor at Nossaman LLC, former US Representative, Former Professor of Political Science at Penn State University; JD Supra, “The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants,” https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/]

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Grid vulnerabilities spark nuclear war.

Klare ’19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; Arms Control Association, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

### Off

Ip da

#### Antitrust in IP hammers innovation, especially in American 5G.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf]

Although much of the excitement about 5G wireless technology focuses on how it will improve every aspect of our lives – from smart homes to smart cities, from healthcare to food to business to entertainment – this technology is also critical for an often-invisible, but even more critical, application: national security. 5G is a vast improvement over existing mobile technology, with massively increased speeds of data transfer and other enhanced capacities. The benefits this unprecedented speed and capacity will have for the United States military include improved surveillance and reconnaissance systems, new and more accurate methods of command and control, and integrated and streamlined logistics systems for increased efficiency.1 On the other hand, the same technological advancements facilitated by 5G technology may also give rise to new cybersecurity vulnerabilities.

Although it is the future of everything, 5G does not pose a potential problem in some far-off future. Today, the U.S. is already depending on a wide array of 5G technology suppliers for its national security system. For example, the national security programs of the Department of Defense (DOD) rely on continued access to telecommunication products made by companies with security clearance on a range of active classified and unclassified prime government contracts.2 Devices that rely on such wireless technology include those used to command troops in combat, control drones, target smart munitions, and perform other vital military functions.3 Allied partnerships with the U.S. also depend on its efforts to address cybersecurity in the next generation of wireless, 5G, and Internet of things.4

To ensure the safety of the systems on which the U.S. military relies and avoid unknown and unexpected cybersecurity vulnerabilities, the U.S. must remain an active and competitive participant in 5G development. Antitrust policies that undermine the intellectual property rights of U.S. innovators will diminish U.S. companies’ ability to invest in research and development (R&D) and to compete in the global 5G ecosystem. Even more important than increased economic growth, new jobs, and enhanced daily lives, these antitrust policies must be changed for the sake of U.S. national security.

#### Catalyzes Taiwan war.

Kania ’19 [Elsa B; November 7; an Adjunct Senior Fellow with the Technology and National Security Program at the Center for a New American Security, PhD student in Harvard University's Department of Government; Center for a New American Security, “Securing Our 5G Future: The Competitive Challenge and Considerations for U.S. Policy,” https://www.cnas.org/publications/reports/securing-our-5g-future]

Given the gravity of these security challenges, the apparent centrality of Chinese companies in the global development of 5G has raised intense concerns. There is a very real risk that vulnerabilities in networks, whether the result of poor security practices or deliberate introduction of backdoors, could be weaponized for leverage or coercive purposes, particularly in a crisis or conflict scenario. Considering China’s history of IP theft and cyberespionage, there is also a real risk such networks could be exploited for purposes of espionage.117 As a Chinese company, Huawei also would be subject to a number of legal demands, regulatory requirements, and mechanisms of coercion that are often ambiguous and expansive.118 Regardless of whether Huawei’s leadership may wish to disregard an order from the Chinese government, China lacks an independent judiciary system for company leaders to plead their case against the government, as Apple did in the United States when it fought an FBI order to unlock an iPhone. Huawei’s claims that it would “say no” to the Chinese government are not credible without indications of the company’s actual ability to do so.

Even if Huawei is given the full benefit of the doubt, despite its history and apparent involvement with the Chinese military and intelligence organizations, Huawei’s products and services have been assessed to be highly insecure, with a much greater prevalence of vulnerabilities relative to their primary competitors.119 Moreover, there are reasons to question whether knowledge of any bugs in its equipment could be shared more readily with China’s Ministry of State Security (MSS). This risk may be heightened given the influence of MSS in China’s vulnerabilities database, not to mention Huawei’s historical and continued linkages to the Chinese People’s Liberation Army, including military intelligence.120 For the United States, these risks and security concerns are inextricable from today’s geopolitical exigencies, insofar as the U.S.-China rivalry encompasses scenarios for which there is a nonzero probability of conflict, including over Taiwan. Consistently, Chinese military writings have highlighted the potential for cyberattacks on critical infrastructure as a prelude to outright warfare.121 The presence of equipment from high-risk vendors, such as Huawei, even in rural telecoms is concerning, considering that some of these networks are near military bases, which raises risks of espionage or exploitation.

#### Goes nuclear.

Warren ’21 [James; July 22; visiting scholar in the American Studies Department at Brown University; the Daily Beast, “Wonder Where World War III Might Break Out? Try Taiwan,” https://www.thedailybeast.com/wonder-where-world-war-iii-might-break-out-try-taiwan]

Ever wondered where World War III might break out?

A clear and troubling consensus has emerged in the American national security community that the Taiwan Strait is the most likely place for a major war to erupt between the United States and China; that it might start soon, and that such a conflict might quickly escalate into a nuclear confrontation.

In March, the leading foreign policy organization in the United States, the Council on Foreign Relations in New York, issued a report concluding that Taiwan has become “the most dangerous flashpoint in the world.” There, a unique and troubling set of geopolitical developments have conspired to make a shooting war between the People’s Republic of China and the United States more likely than ever before. Recently the newly appointed commander of U.S. forces in the Indo-Pacific Region, Admiral John Aquilino, remarked that a possible invasion of Taiwan by the People’s Republic of China (PRC) “is much closer than we think.”

### Off

Theory

#### Interp: Affirmatives should disclose if someone from the team has already read it. Their JV teams read this affirmative round 1, we asked them for disclosure and were not given an answer. This justifies the affirmative never disclosing and makes pre-round prep useless, gutting education. Vote negative as a deterrent.

### Off

Biz con

#### Growth will rebound due to self-sustaining corporate performance.

Van der Welle ’21 [Peter; July 7; Strategist within the Global Macro team, M.A. in Economics from Tilburg University; Robeco, “How capex holds the key to a self-sustaining economic recovery,” <https://www.robeco.com/latam/en/insights/2021/07/how-capex-holds-the-key-to-a-self-sustaining-economic-recovery.html>]

Title:

How capex holds the key to a self-sustaining economic recovery.

Capital expenditure to fix supply shortages and meet burgeoning demand is seen figuring strongly in the post-Covid recovery.

[Author and summary omitted].

Companies are expected to invest heavily in new equipment and capacity as they seek to meet the pent-up demand released from economic reopening.

“The world is emerging from the pandemic, and much of the focus has been on the release of huge pent-up demand for goods and services that have been inaccessible for much of the past year,” says Peter Van der Welle, strategist with Robeco’s multi-asset team.

“But there is a bigger issue regarding the ability of companies to supply these goods and services, due to the supply side constraints that have emerged through economic reopening. We believe this is powering a resurgence in capital expenditure by companies, and those which are investing in new equipment to meet greater demand will be the more sought after stocks.”

Capex intentions

Van der Welle says this trend can already be seen in the US Federal Reserve’s Capex Intentions Index, which shows that steep year-on-year increases in capital expenditures are planned.

“So, that's promising for a near-term rebound in the capex cycle,” he says. “The market has already picked up on that theme because you can see a clear outperformance of capex-intensive stocks compared to the broader market year to date.”

Fiscal dominance

Van der Welle says five elements support the multi-asset team’s view that capex will rise from here onwards. “The first is the overarching macroeconomic picture in that we are increasingly moving towards an environment of fiscal dominance and away from one that has been monetary-led via quantitative easing,” he says.

“Central banks have pursued very easy monetary policies, but they have hit the nominal lower bounds with regard to policy rates.”

“This is a hard constraint because real rates are difficult for central banks to push even lower than they are nowadays, given the strong consensus among both central bankers and market participants that inflation is transitory.”

Big spending plans

For stimulus, fiscal policy is better suited to address the negative supply shock that Covid-19 has posed. Fiscal dominance can be seen in the huge infrastructure spending planned in the US, with the USD 1.9 trillion American Rescue Plan already in motion, and the USD 2 trillion American Jobs Plan going through Congress. In Europe, the disbursement of the EUR 750 billion EU Recovery Fund is due to start later in July.

“An era of fiscal dominance is able to say goodbye to the secular stagnation thesis, which holds that the economy is suffering from under-investment,” says Van der Welle. “Under-investment due to insufficient demand, which was the biggest problem after the global financial crisis, has become less likely.”

“We saw very subdued consumption growth both in the US and elsewhere between 2009 and 2019. That story is reversing in the US. Households’ income has been supported by fiscal policy during the Covid-19 recession, while burgeoning consumer demand in the reopening phase could prove to be more sticky as employment prospects continue to improve in the medium term.”

Tobin’s Q looks good

A third reason to expect higher capex is driven by ‘Tobin’s Q’ – the market value of a company divided by its assets' replacement cost. If this ratio is above one, then corporates have an incentive to invest directly in the underlying assets rather than buying another company at market value to acquire the same assets.

The Tobin’s Q ratio is currently at 1.7 for the US. “So it's very expensive to do M&A, and it is wiser for corporates to invest in the underlying capital goods themselves,” Van der Welle says.

“We should therefore expect a gradual move away from M&A activity towards companies making direct investments in capital goods.”

Supply-side constraints

The fourth element is the severe supply-side constraints seen in the global economy, as capacity shut down during the pandemic.

“This is reflected in the ISM Prices Paid Index, which reached an all-time high in June in reflection of rampant shortages of raw materials and labor,” says Van der Welle.

“Clearly the issue today following the pandemic is not demand related, but supply related. This will also trigger more awareness to push the productivity frontier and incentivize capital expenditure.”

Less reliance on labor

The fifth element is the partial substitution from labor to capital in the US against the backdrop of lingering labor shortages.

“A decline in the labor force participation rate shows that people are not quickly returning to the labor force, as they have been disincentivized by the subsidies and pay checks they have gained from the stimulus plans, and/or structural changes in their work/life balance due to the pandemic,” says Van der Welle.

“When the cost of labor becomes more expensive, substituting labor with capital becomes more attractive for employers. Typically, the inflection point for capex intentions becoming positive is when unit labor costs rise by more than 2% year on year, which is the case today.”

Capex will lengthen the earnings cycle

Regarding earnings, there is a significant relationship between capex intentions and productivity, though the lag from intending to invest to actually getting a realized productivity gain is quite long – up to several years.

Higher capex that eventually brings higher productivity growth will sustain the earnings cycle, Van der Welle says. Higher productivity gives corporates more pricing power because they suppress unit labor costs, and that means profit margins can stay elevated for longer.

#### Changing the legal standards of antitrust spills over to crush otherwise surging corporate growth.

Thierer ’21 [Adam; February 25; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>]

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Extinction---recovery caps numerous geopolitical crises.

Baird ’20 [Zoe; October 2020; C.E.O. and President of the Markle Foundation, Member of the Aspen Strategy Group and former Trustee at the Council on Foreign Relations, J.D. and A.B. from the University of California at Berkeley; Domestic and International (Dis)order: A Strategic Response, “Equitable Economic Recovery is a National Security Imperative,” Ch. 13]

A strong and inclusive economy is essential for American national security and global leadership. As the nation seeks to return from a historic economic crisis, the national security community should support an equitable recovery that helps every worker adapt to the seismic shifts underway in our economy.

Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the two-thirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership. Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape. An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

The U.S. has unique advantages that give it the tools to emerge from the crisis with tremendous economic strength— including an entrepreneurial spirit and the technological and scientific infrastructure to lead global efforts in developing industries like green energy and biosciences that will shape the international economy for decades to come.

### Advantage 1

#### ‘Patent holdups’ are a lie. Antitrust policies are a greater threat.

Barnett ’18 [Jonathan, Ronald A. Cass, Richard A. Epstein, Douglas H. Ginsburg, Gus Hurwitz, David J. Kappos, Paul Michel, Adam Mossoff, Kristen Osenga, David J. Teece, and Joshua D. Wright; February 22; Professor at the USC Gould School of Law; Dean Emeritus of the Boston University School of Law; Law Professor at New York University; Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, Law Professor at George Mason University; Law Professor at the University of Nebraska; Former Under Secretary of Commerce and Director of the United States Patent & Trademark Office; Retired Chief Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Professor at the University of Richmond School of Law; Thomas W. Tusher Professor in Global Business at the University of California at Berkeley; Former Commissioner of the Federal Trade Commissioner, Law Professor at George Mason University; IP Watchdog, “Apply Evidence-based Approach to Antitrust Law Equally to Innovators and Implementers,” https://www.ipwatchdog.com/2018/02/22/evidence-based-application-antitrust-law/id=93755/]

As judges, former judges and government officials, legal academics and economists who are experts in antitrust and intellectual property law, we write to express our support for your recent announcement that the Antitrust Division of the Department of Justice will adopt an evidence-based approach in applying antitrust law equally to both innovators who develop and implementers who use technological standards in the innovation industries.

We disagree with the letter recently submitted to you on January 24, 2018 by other parties who expressed their misgivings with your announcement of your plan to return to this sound antitrust policy. Unfortunately, their January 24 letter perpetuates the long-standing misunderstanding held by some academics, policy activists, and companies, who baldly assert that one-sided “patent holdup” is a real-world problem in the high-tech industries. This claim rests entirely on questionable models that predict that opportunistic behavior in patent licensing transactions will result in higher consumer prices. These predictions are inconsistent with actual market data in any high-tech industry.

It bears emphasizing that no empirical study has demonstrated that a patent-owner’s request for injunctive relief after a finding of a defendant’s infringement of its property rights has ever resulted either in consumer harm or in slowing down the pace of technological innovation. Given the well understood role that innovation plays in facilitating economic growth and wellbeing, a heavy burden of proof rests on those who insist on the centrality of “patent holdup” to offer some tangible support for that view, which they have ultimately failed to supply in the decade or more since that theory was first propounded. Given the contrary conclusions in economic studies of the past decade, there is no sound empirical basis for claims of a systematic problem of opportunistic “patent holdup” by owners of patents on technological standards.

Several empirical studies demonstrate that the observed pattern in high-tech industries, especially in the smartphone industry, is one of constant lower quality-adjusted prices, increased entry and competition, and higher performance standards. These robust findings all contradict the testable implications of “patent holdup” theory. The best explanation for this disconnect between the flawed “patent holdup” theory and overwhelming weight of the evidence lies in the institutional features that surround industry licensing practices. These practices include bilateral licensing negotiations, and the reputation effects in long-term standards activities. Both support a feed-back mechanism that creates a system of natural checks and balances in the setting of royalty rates. The simplistic models of “patent holdup” ignore all these moderating effects.

Of even greater concern are the likely negative social welfare consequences of prior antitrust policies implemented based upon nothing more than the purely theoretical concern about opportunistic “patent holdup” behavior by owners of patented innovations incorporated 2 into technological standards. For example, those policies have resulted in demands to set royalty rates for technologies incorporated into standards in the smartphone industry according to particular components in a smartphone. This was a change to the longstanding industry practice of licensing at the end-user device level, which recognized that fundamental technologies incorporated into the cellular standards like 2G, 3G, etc., optimize the entire wireless system and network, and not just the specific chip or component of a chip inside a device.

#### Patent holdup theory is as wrong as the Peaceful Maya theory.

Haber ’17 [Stephen and Alexander Galetovic; March 2; Political Science Professor at Stanford University; Economics Professor at Universidad de los Andes in Santiago; Journal of Competition Law & Economics, “The Fallacies of Patent-Holdup Theory,” Vol. 13, No. 1]

I. INTRODUCTION

Until the late 1980s, archaeologists maintained that the Ancient Maya were a peace-loving people whose elites were primarily concerned with the scholarly study of astronomy and mathematics. They believed this conjecture despite the fact that one could not walk through a Mayan ruin without tripping over immense stelae depicting grotesquely violent images of victorious warriors subjugating their captives.

The process by which archaeologists created a theory about peaceful forest dwellers in the face of self-evident facts to the contrary is a testament to the power of fundamental fallacies. Their first fallacy was the idea that the inscriptions on the stelae were different from other glyph-based writing systems: instead of being a mix of whole words and phonetic sounds, as is the case with Egyptian hieroglyphic and cuneiform, archaeologists and epigraphers maintained that each symbol in the Mayan script represented an entire word or concept. That fallacy led them into a second fallacy: they maintained that non-calendrical Mayan hieroglyphs were indecipherable. That fallacy allowed the emergence of a third fallacy: because the theory of peace-loving forest people could not be tested against written evidence, the gruesome images on the stelae could be explained away as depicting mythical gods, not actual people. Thus, the archaeologists arrived at the false conclusion that the Maya were peaceful folk.

The fact that it took four decades for these fallacies to be overturned, one by one, is a testament to the reluctance of scholars to reject fashionable theories.1 In point of fact, a Russian epigrapher had figured out the principles of Mayan translation in 1952, but it took two decades for American scholars to accept that his theory of Mayan writing was correct and theirs was wrong. It then took another decade for enough monumental inscriptions to be translated to convince archaeologists that the stelae did not depict mythical gods, but instead told the political history of Mayan kings—their birth, military conquests, and death. It took still another decade before a consensus emerged that the evidence that had been right in front of archaeologists all along contradicted their theory.

It would be comforting if the only field ever led astray by fundamental fallacies was Mayan archaeology, but that is hardly the case. Faulty premises often lead researchers toward conclusions that do not fit the facts—so much so that Nobel Laureate Richard Feynman made it the subject of his famous commencement address at the California Institute of Technology, in which he stressed the importance of bending over backward to do every test that might falsify a theory.2

A. An Influential Theory

Our concern here is with how fundamental fallacies gave rise to patent-holdup theory, which has guided antitrust and competition authorities around the world for nearly two decades. In the early 2000s, legal academics and antitrust economists asked an important question: does a decentralized system of technology development, in which complex, interoperable information technology (IT) products rely on standard-essential patents (SEPs) owned by many firms, allow SEP owners to “hold up” manufacturers, thereby stifling innovation and hurting consumers in the form of higher prices and lower-quality products?

The answer—patent-holdup theory—consists of five nested claims. First, that patent owners can systematically overcharge manufacturers for licenses to their patents through the economic mechanism of holdup—the opportunistic appropriation of a downstream firm's quasi rents (revenues in excess of short-run costs). Second, that when there are multiple patent holders, each practicing holdup on a downstream firm, cumulative patent royalty rates become astronomically high—a phenomenon patent-holdup theorists termed “royalty stacking.” Third, that the holdup problem is exacerbated when patented technologies are included in the industry standards necessary to make IT products interoperable and compatible. Fourth, that patent holdup, royalty stacking, and the inclusion of patented technologies in industry standards are strangling innovation, most particularly in SEP-intensive IT products. Fifth, that the government must intervene to solve this problem; the market, left on its own, will fail.

Carl Shapiro's seminal article provides a clear statement of the threat posed by patent holdup to innovation:

The holdup problem is worst in industries where hundreds if not thousands of patents, some already issued, others pending, can potentially read on a given product. In these industries, the danger that a manufacturer will step on a land mine is all too real. The result will be that some companies avoid the mine field altogether, that is, refrain from introducing certain products for fear of holdup.3

He clearly articulates the need for a public policy intervention: “I submit that this holdup problem is very real today, and that both patent and antitrust policymakers should regard holdup as a problem of first order significance in the years ahead.”4

The claim that patent holdup is common and is a threat to innovation can be found in any number of scholarly articles. Joseph Farrell, John Hayes, Carl Shapiro, and Theresa Sullivan state that “surprise hold-up may be largely a transfer, but anticipation of hold-up encourages a range of inefficient forms of self-protection, such as postponing or minimizing investment, or ensuring that standards use only antique technology.”5 Mark Lemley and Carl Shapiro concur:

In the long run, if products are expected to be subject to some degree of holdup, the firm may not find it worth incurring the costs necessary to develop, manufacture, and sell the product. Assertions based on the shut-down condition that royalty stacking is somehow a minor problem or that royalty stacking cannot stifle innovation or hinder the market penetration of products that have been developed are simply unfounded.6

Most recently, Fiona Scott Morton and Carl Shapiro warn that patent holdup and its related mechanisms threaten the Internet of Things (IoT), and suggest the need for antitrust intervention:

Failure to prevent Patent Holdup relating to tomorrow's information technology and communications standards is likely to cause significant social welfare loss in the years ahead. If new and more effective private solutions relating to standard setting do not emerge to promote innovation and protect consumers, antitrust enforcement is one of the only remaining remedies that seems feasible.7

Patent-holdup theory has also been influential among antitrust authorities around the world. Several Federal Trade Commission (FTC) reports8 and a joint Department of Justice (DOJ) and FTC report9 discuss the threat to innovation posed by patent holdup and royalty stacking, citing the academic literature. For example, one FTC report states:

Unless downstream actors—whether innovators or manufacturers—can mitigate the problem [of patent holdup], they may have to choose between the risk of being sued for infringement after they sink costs into invention or production, or dropping innovative or productive efforts altogether. Either option can injure economic welfare.10

These views are echoed by agency heads, such as the former chair of the FTC, the former Deputy Attorney General for Antitrust, and the European Competition Commissioner, who signal that they are willing to take action about the problem.11

Patent-holdup theory is also mentioned in amicus briefs that argue that patent holdup is a common occurrence. For example, a 2006 brief file by 52 intellectual property professors submitted in support of the defendant in eBay, Inc. v. MercExchange, L.L.C. states that:

[S]uch inappropriate “holdups” occur on a regular basis under the Federal Circuit's mandatory-injunction standard. Patentees can obtain revenue in excess of the value of their technology by threatening to enjoin products that are predominantly noninfringing and in which the defendant has made significant irreversible investments.12

It should therefore not be surprising that courts have been influenced by patent-holdup theory. For example, in eBay, Justice Kennedy's concurring opinion cites an FTC report that warns of the impact of patent holdup by firms that do not themselves practice their patents:

An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees. For these firms, an injunction, and the potentially serious sanctions arising from its violation, can be employed as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent. When the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for the infringement and an injunction may not serve the public interest.13

The landmark Supreme Court eBay decision is not an outlier. Jonathan Barnett identifies thirty-seven federal court decisions that mention “patent holdup” or “royalty stacking.”14

B. The Stelae That Contradicted the Theory

Like the theory of the peaceful Maya, patent-holdup theory had its own set of facts—stelae, as it were—that contradicted the theory. Patent-holdup theorists asserted that innovation in SEP-intensive IT products was under threat: excessive royalties were discouraging new firm entry and reinvestment by existing firms. They called particular attention to the threat to innovation in mobile telephones and personal computers, as well as in extensions of those products in the IoT.15

Economists measure rates of innovation by examining relative rates of change of quality-adjusted prices,16 and one can download the publicly available, product-by-product, quality-adjusted price data compiled by the Bureau of Labor Statistics in order to carry out an analysis of innovation rates across products and within products over time.17 An analysis of that data shows that from 1997 to 2013, rates of innovation in phone equipment (which includes low-tech items such as fax machines and landline phones, as well as wireless phones) was 10 percent per annum faster than the economy-wide average. The data show that the rate of innovation in portable and laptop computers was faster still—31 percent per annum faster than the economy-wide average. Similar rates of innovation are observed in other SEP-intensive IT products such as video equipment, audio equipment, desktop computers, and televisions. Furthermore, rates of innovation in SEP-intensive IT products have not slowed over time relative to the rates of innovation in similar, non-SEP-intensive IT products.18 For example, the rate of innovation in SEP-intensive laptop computers compared with non-SEP-intensive mainframe computers shows that SEP intensity was associated with faster innovation.19

There are other hallmarks of innovation beyond falling quality-adjusted relative prices: one would expect to see rapidly increasing output even in the face of falling prices; and, because innovation is typically characterized by Schumpeterian creative destruction, one would also expect to see high levels of firm entry and exit. This is precisely what researchers do see when they examine data on the canonical case of the mobile phone industry. Between 1994 and 2013, the number of SEP holders increased from 2 to 128. Patent-holdup theory would predict that this increase should have dramatically slowed the rate of innovation. That prediction did not obtain in reality, however. Prices of mobile devices dropped very fast, while output grew sixty-two-fold. During this same period, there was rapid entry of new firms into the manufacture of phones and tablets—so much so that industrial concentration, measured with the number of devices sold, actually fell in this industry over time.20

According to patent-holdup theory, excessive patent royalties cause slow rates of innovation. As an empirical matter, the aggregate royalties paid by licensees in any industry can be estimated on the basis of the SEC 10-K and 40-F filings of the patent-licensing firms.21 The data on the canonical case of mobile phones shows that the cumulative royalty yield from the twenty-one largest patent licensors in the mobile phone value chain was only 3.3 percent of a mobile phone's average sales price in 2015. That ratio has been fairly stable since at least far back as 2007.22 Researchers have parameterized royalty-stacking models from the patent-holdup literature using actual price and quantity data, and have discovered that the royalty yield predicted by the models is more than twenty times higher than the actual royalty yield and about four-fifths of the price of a smartphone. They have also found that no individual patent licensor earns an individual royalty consistent with the hypothesis that it operated as a monopolist.23

The facts of fast and continuous innovation in the mobile phone industry—one of the stelae of patent-holdup theory—are evident to anyone with a smartphone in their pocket. Three decades ago, a mobile phone cost the current equivalent of $10,000, was the size of a brick, weighed a kilo, and enabled its user to make a half-hour call before going dead. Today, a smartphone has more computational power than the supercomputers that guided the Apollo missions to the moon, allows a user to produce and share data, video, and audio files with anyone on the planet, costs an average of $300—and also happens to make a phone call.

At the same time that there are self-evident stelae contradicting patent-holdup theory, there is no positive evidence in support of its core predictions. Damien Geradin and Miguel Rato,24 Damien Geradin, Anne Layne-Farrar and Jorge Padilla,25 Vincenzo Denicolò, Damien Geradin, Anne Layne-Farrar, and Jorge Padilla,26 Richard Epstein, F. Scott Kieff, and Daniel Spulber,27 Kirti Gupta,28 Anne Layne-Farrar,29 J. Gregory Sidak,30 and Edward Egan and David Teece31 review the literature on patent holdup, patent thickets, and royalty stacking.32 All of these studies reach the same general conclusion, which is perhaps best summed up by Layne-Farrar: “Certainly the theories have been developed, but the empirical support is still lacking. Despite the fifteen years that proponents of the theories have had to amass evidence, the empirical studies conducted thus far have not shown that holdup or royalty stacking is a common problem in practice.”33

C. Three Fundamental Fallacies and Their Origin

When theory and evidence disagree, there is either something wrong with the theory or something wrong with the evidence. We think that there is something wrong with the theory.

Patent-holdup theory conflates two different economic mechanisms: holdup and market power. Holdup means that one firm appropriates another firm's quasi rent—its revenues minus its short-run costs—through opportunistic behavior. A firm that is being held up, by definition, does not generate enough revenue to cover its long-run costs. Therefore, the firm will not reinvest once its capital wears out. This is not a long-run equilibrium. Market power, by contrast, means that a firm can set prices such that it appropriates a monopoly rent from a market. The exercise of market power can be a long-run equilibrium, because the downstream firms will cover their long-run costs and continue to reinvest as their capital equipment wears out.34 Thus, holdup and the exercise of market power are two different, mutually inconsistent economic mechanisms. One cannot simultaneously have a long-run equilibrium and not have a long-run equilibrium.

The conflation of holdup and market power leads to three fallacies that underpin patent-holdup theory. Once the mechanics of holdup are loosened from their moorings in economic theory, it becomes possible to simultaneously claim that patent holdup is a variant of holdup as it is understood in mainstream economics and define it in ways that are inconsistent with the meaning of holdup as it is understood in mainstream economics. Patent holdup elides key assumptions of the standard theory and transforms necessary conditions for holdup into sufficient conditions for holdup. The implications are fundamental. In the established theory, firms—working together—will make structural, contractual, and behavioral adaptations in order to prevent holdup, thereby sustaining trade and investment in equilibrium. In patent-holdup theory, by contrast, firms cannot adapt and solve the problem wrought by opportunistic renegotiation of a contract, because the game begins after the R&D is completed and manufacturers invest. Adaptations to prevent holdup are ruled out by construction, and market failure is inevitable.

The conflation of holdup and market power leads to a second fallacy. Patent-holdup theory claims that the same manufacturing firms can be held up many times over, resulting in a phenomenon called royalty stacking. In point of fact, however, holdup cannot occur many times over to the same firm. A firm's quasi rents (the difference between its revenues and its short-run costs) can be extracted only once. Any attempt to extract more revenues would cause the firm to shut down. Royalty stacking, by contrast, is about the exercise of market power by multiple input suppliers to downstream firms. Although this multiplicity of input suppliers might be an inefficient organization of a market, it nonetheless can be a long-run equilibrium, unlike holdup.

To claim that market power is being exercised, one needs to identify its source. In royalty stacking, the source is the patents themselves. A patent confers a temporary, limited property right that might confer some market power—and does so by design. Thus, in order to claim that there is a public policy problem, one needs to claim that the patents in question confer market power in excess of that which is conferred by the patent grants themselves. What could the source of that excess market power be? According to the theory, patent-holding firms are able to appropriate more than their incremental contribution to a product's value by virtue of the fact that their technologies have been made part of a standard. The users of the technology are locked into that standard and consequently can be subjected to patent holdup.

The conflation of holdup and market power leads to a third fallacy: patented technologies that are part of an industry standard add little or no value to the markets that they help to create. There are two problems with this fallacy—one theoretical and the other empirical. The theoretical problem is, as Nobel Prize winner Kenneth Arrow showed in 1962, that when an innovation is “drastic” (that is, much better than the alternatives on offer) a profit-maximizing monopoly will charge less than the technology's incremental value. The empirical problem is that the whole point of standard development organizations (SDOs) in IT industries is to make large technological jumps at a fast pace, so that manufacturers may produce superior products that consumers will adopt enthusiastically, thereby increasing the revenues of all the industry stakeholders.35 They are not in the business of small incremental improvements; they are in the business of creating drastic innovations.

#### Best studies and the Trump years prove no impact

Kee et al 2013 - Senior economist @ the World Bank  
Hiau Looi Kee, Cristina Neagu [either a world class hand baller or an economist], and Alessandro Nicita [economist at the United Nation Conference for Trade and Development]; Is Protectionism on the Rise? Assessing National Trade Policies during the Crisis of 2008; Review of Economics and Statistics95.1 (Mar 2013): 342-346

WITH the dramatic collapse of world trade in the wake of the biggest global recession in recent history, many have feared that governments may respond by increasing tariffs and other trade policy barriers to protect their domestic economies, which may indirectly prolong the recession and lead to domestic unrest. In fact, in December 2008, the first of the crisis-related demonstrations erupted in several cities in Russia over the increase in car tariffs (Levy, 2008). Has protectionism been rising since fall 2008? To answer this question, we compare the overall trade restrictiveness Indices (OTRI) of a wide range of countries in 2008 and 2009. The OTRI summarizes the trade policy stance of a country by calculating the uniform tariff that will keep its overall imports at the current level when the country in fact has different tariffs for different goods. Unlike trade-weighted average tariffs, the OTRI takes into account the importance of each good in total imports, as well as the responsiveness of the import of each good with respect to its tariff. Thus, not only are the weights proportionate to the import value of the goods, but goods that have a larger fall in imports when tariffs are imposed (those goods that are highly elastic in demand) are also given larger weights. The empirical methodology of the OTRI was first developed by Kee, Nicita, and Olarreaga (2008, 2009), based on the theoretical underpinning of Anderson and Neary (1994, 1996, 2003). Irwin (2010) also uses a similar methodology to study the historic protection level of the United States from 1867 to 1961. A major benefit of looking at the changes in the OTRI over the crisis period is that it allows us not only to measure the changes in trade policy but also to quantify the drop in trade due to those changes. This is the point of departure of our paper from the previous literature, which tends to focus on only average tariff increases or the percentage of tariff lines that have increased during the crisis period. Many recent papers have studied the trade impact of the global crisis in 2008 (see Baldwin & Evenett, 2009, and Baldwin, 2009). While consensus has yet to emerge among researchers, the two leading explanations for the large and synchronized drop in trade are the role of international supply chains (Yi, 2009) and the lack of trade credits and finance during the crisis period (Amiti & Weinstein, 2009; Chor & Manova, 2009). In a unified framework, Eaton et al. (2010) merges an input-output framework with a gravity trade model of the world and shows that changes in demand play the most significant role in explaining the large drop in trade-to-GDP ratio during the crisis, while trade frictions, which include trade policies and trade credits, explain at most about 15% of the collapse in trade. Thus, trade policy as a protectionist device has not been seen to play a substantial role in the global collapse of trade—neither as a cause nor a consequence. Nevertheless, anecdotal evidence suggests that some countries are actively tinkering with their trade policies. For example, during the crisis period, Bolivia, Ecuador, and Turkey have altered their tariffs on a large share of their imported products, and India increased its use of antidumping (AD) duties. How important are those changes in explaining or prolonging the collapse in world trade? The objective of this paper is to carefully compare the trade policies of a wide range of countries over the crisis period and assess the extent of the fall in trade due to the increase in tariffs and AD duties of these countries. For the purpose of this paper, we narrowly define trade policies to include only tariffs and AD duties. Due to data limitations, we do not look at other policies that may affect trade, such as government bailouts and buy-national requirements, which could play a much larger role than tariffs and AD in affecting trade during the crisis period. To achieve our objective, we obtained the most favored nations (MFN) applied tariff schedules and the bilateral tariff schedules for a wide range of countries in 2008 and 2009.1 The MFN-applied tariffs tend to overestimate the level of protection because they do not account for the existence of bilateral or regional tariff preferences. Hence, it is important for us to construct the OTRI based on the bilateral tariff schedules. This significantly complicates the calculation of the OTRI because each country may have up to 200 trading partners and each bilateral tariff schedule consists of nearly 5,000 Harmonized System (HS) 6 digit products. To capture the effect of antidumping, we also merge the bilateral tariff schedules with the World Bank Global Antidumping Database. Thus, changes in the OTRI reflect trade policy changes related to both the changes in applied tariffs and antidumping duties during the crisis period. In addition, we need bilateral import demand elasticities and bilateral trade flow data to properly weigh these bilateral tariffs. We modify the multilateral import demand elasticity estimates in Kee et al. (2008) to obtain bilateral import demand elasticities. Bilateral trade flow data are from Comtrade. Finally, to make sure that changes in the OTRI period purely capture changes in trade policies, we use the 2008 bilateral trade flows and elasticities as fixed weights. As such, changes in trade or elasticity due to demand shocks will not affect our OTRI measures. Going through the schedules of all countries in our data set, we found that overall, there has been no widespread increase in tariffs. Although many countries have increased tariffs on imported products, the trade impact has generally been minimal. However, for a handful of countries, tariff increases on important items in agriculture and manufacturing pushed up their OTRI and significantly affected trade. Russia, Malawi, and Argentina all increased tariffs on manufacturing products that caused their OTRI to increase by 0.9 to 1.2 percentage points and their trade flows to drop by US$4.8 billion, US$29 million, and US$914 million, respectively. Turkey increased tariffs on a wide range of agricultural products, which raised its OTRI by 0.8 percentage points and caused its trade flow to decrease by US$2.2 billion. With the removal of a temporary tariff reduction on palm oil and the introduction of some antidumping duties, India had a large increase in the level of protectionism on agriculture products (8.3 percentage points), even though this was offset by tariff liberalization in the manufacturing sector such that India’s OTRI increased only by 0.1 percentage points. Other countries that had large drops in trade due to increases in tariffs include China (US$5 billion), Canada (US$1.8 billion), and Brazil (US$991 million). Finally, for the United States and the EU, although the tariff schedules remained roughly the same throughout our period of analysis, spikes in antidumping duties caused their OTRI to increase by 0.5 percentage points, and 0.1 percentage points, respectively. Jointly, if we add up all the decreases in trade for all countries during the crisis period due to changes in tariffs and antidumping duties, in the worst-case scenario, the total decrease in imports is about US$43 billion, which is less than half a percent of the world’s imports in 2008. According to the latest estimate of theWorld Trade Organization (2010), the world’s imports decreased by 24% from its precrisis level. Thus, trade policies can explain at most 2% of the sharp drop in world trade. This suggests that protectionism was not the main culprit behind the collapse of world trade and the collapse of world trade did not cause protectionism to increase.

### Advantage 2

#### No climate wars

Erik **Gartzke 11**, Associate Professor of Political Science at UC-San Diego, March 16, 2011, “Could Climate Change Precipitate Peace?,” online: <http://dss.ucsd.edu/~egartzke/papers/climate_for_conflict_03052011.pdf>

An evolving consensus that the earth is becoming warmer has led to increased interest in the social consequences of climate change. Along with rising sea levels, varying patterns of precipitation, vegetation, and possible resource scarcity, perhaps the most incendiary claims have to do with conflict and political violence. A second consensus has begun to emerge among policy makers and opinion leaders that global warming may well result in increased civil and even interstate warfare, as groups and nations compete for water, soil, or oil. Authoritative bodies, leading government officials, and even the Nobel Peace prize committee have highlighted the prospect that climate change will give rise to more heated confrontations as communities compete in a warmer world.Where the basic science of climate change preceded policy, this second consensus among politicians and pundits about climate and conflict formed in the absence of substantial scientific evidence. While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions (c.f., Homer-Dixon 1991, 1994; Burke et al. 2009). these claims have been severely criticized by other studies (Nordas&Gleditsch 2007; Buhaug et al. 2010: Buhaug 2010).1 In contrast, long-term macro statistical studies find that conflict increases in periods of climatic chill (Zhang et al. 2006, 2007; Tol& Wagner 2010).2 Research on the more recent past reveals that interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt (Goldstein 2002; Levy et al. 2001; Luard 1986, 1988; Hensel 2002; Sarkees, et al. 2003; Mueller 2009).3 While talk of a ''climatic peace” is premature, broader claims that global warming causes conflict must be evaluated in light of countervailing evidence and a contrasting set of causal theoretical claims.4

#### Alt cuases---Their ladilaw card is in the context of China acting as well which the plan doesn’t solve---no where do they say china cares about reaching net zero

#### Warming doesn’t cause extinction---new studies.

**Nordhaus 20** Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

#### No Russia war---deterrence solves

Edward **Lucas 15**, senior editor for the Economist, has specialized in Russia and Eastern Europe, “No, We’re Not Facing World War III,” 12/6/15, http://www.thedailybeast.com/articles/2015/12/06/no-we-re-not-facing-world-war-iii.html

Yet the big point is that deterrence worked, and still works. In fact it works better now than ever. The United States is overwhelmingly dominant in every part of the military spectrum, from space to cyber via conventional and nuclear weapons, just as the Western alliance with its combined GDP of around $40 trillion, and population of 800 million, is overwhelmingly more powerful than Russia (GDP of $1.7 trillion and population of 140 million: both shrinking, incidentally).

Putin is a bully, but he is not insane. He may rattle his nuclear saber, but in any real confrontation with the West, he is the guaranteed loser. He can credibly menace the Baltic states (because in Pentagon war games, the Russians always get to the coast before the allies get to Estonia, Latvia, and Lithuania). But this ignores the wider context. So long as the West responds to a geographically limited provocation with a much broader response, Putin is powerless. He is only able to intimidate us if he frames the conflict in his terms: “Will you risk World War III to protect Estonia?”

The answer to that is (in most Western capitals) clearly no, but it is an answer to the wrong question. Instead, we should frame the conflict in our terms. The apocalypse which we can wreak on the Putin regime has nothing to do with enriched uranium and missiles. It comes from exploiting Russia’s Achilles Heel—its dependence on Western financial markets and systems. The Putin regime steals tens of billions of dollars every year from the Russian people. But it does not stash those ill-gotten gains in its own rotten realms. It puts them into well-run investment vehicles in the West. Capital flight from Russia is running at $100 billion a year.

This gives the West—if it so chooses—the best possible response to Russian military intimidation. We can freeze and if necessary seize the Kremlin’s assets in the West. We can question and if necessary prosecute the bankers, lawyers, and accountants who have facilitated this huge tide of dirty money that washes through Vienna, Cyprus, London, and Dubai. We can also investigate the curious behavior of Russian participants in setting energy prices in world markets.

This does not mean we should neglect the military countermeasures needed to deter the Putin regime from bullying its neighbors. We need more troops in Poland and the Baltic states, with closer integration of non-NATO Sweden and Finland. We need better intelligence—especially about Russia’s battlefield nuclear weapons—better cyber-defenses, and a resilient economic and political system which can withstand sanctions, propaganda attacks, and the targeted use of corruption. All these are the elements of what in military jargon is known as “hybrid warfare”—the use of a wide range of military and non-military means in pursuit of a political goal. Hybrid warfare was waged in Ukraine, initially to dramatically success effect.

But it has not succeeded. Russia did not stoke an insurrection all across southern and eastern Ukraine. It did not best the Ukrainian army (pitifully led and equipped though it was). It did not succeed in breaking the Ukrainian people’s will, or toppling the elected government. All that happened for lessons which we should bear in mind in our far stronger and richer societies: Ukrainians survived because they were not scared. We are losing because we are. The fear of “World War III” is part of the Kremlin’s psychological arsenal, designed to make us think that resistance is futile or suicidally risky.

It is not. Russia is in objective terms a nuisance, not a menace. It becomes a danger only because we let it. Putin is far more scared of us than we should be of him. After all, we’ve got his money.

## 2nc---cp

### Fed won’t preempt

#### Congress won’t supersede, the Court would block it, and states are undeterred by the Fed.

De la Cruz ’19 [Peter; June 26; Senior Counsel, J.D. from the University of Toledo; The National Law Review, “States Flex Their Muscles and Antitrust Skills to Block Sprint/T-Mobile Merger,” <https://www.natlawreview.com/article/states-flex-their-muscles-and-antitrust-skills-to-block-sprintt-mobile-merger>]

A highly respected antitrust professor wrote: “When Congress enacted the federal antitrust laws it chose not to foreclose state antimerger activity. The legislative histories of the antitrust laws indicate that the congressional purpose was to supplement, not supplant, state activity. This intention has repeatedly been affirmed by the Supreme Court. Critics fear negative effects from ascendant state merger scrutiny. Many believe that the government’s position towards exceptionally large transactions should be a fundamental matter of national economic policy. Enforcement and nonenforcement decisions, they say, should be made by officials appointed by the President with the approval of the U.S. Senate. Such critics fear that the prospect of challenge by any of fifty states adds uncertainty and delay into an already problematic process, and will cause beneficial transactions never to be attempted.” The year was 1989.1

Since the enactment of the Hart-Scott-Rodino Act in 1976, we have grown accustomed to premerger notification at the federal level for all larger mergers and acquisitions. For the most part, State Attorneys General have participated via comments or supplemental filings in large transactions subject to premerger review. A generation of antitrust lawyers have lived in this environment. Indeed, some years ago lawyers were surprised that the federal government could challenge mergers after the fact given the long lapse in the governments exercise of that power, but that power was never removed, and private merger enforcement action also remains possible.

Can the states seek to block the merger? Yes. Will FCC and US Department of Justice approval stop the state litigation? No. What’s the biggest obstacle facing the state challenge? Limited state funding. Antitrust litigation is often protracted and costly. T-Mobile and Sprint, with their largest stockholders — Deutsche Telekom AG and SoftBank Group Corp., respectively — will certainly dedicate resources to defeat the states via litigation siege. These pressures, coupled with Justice Department clearance, may push the states to settle, although the terms of a successful settlement for the states is unclear. Meanwhile, T-Mobile and Sprint may be delayed in completing the transaction, which is a costly complication without a certain outcome.

The Redacted Complaint filed by nine states and the District of Columbia, and later joined by an additional four states, presents a solid facial argument against the merger. There are only four companies with networks that serve at least 90% of the U.S. population. Verizon and AT&T are the largest. “T-Mobile and Sprint are the third and fourth largest [mobile network operators] MNOs in the United States and serve approximately 80 million and 55 million customers, respectively.”2

The states allege that T-Mobile’s controlling shareholder, Deutsche Telekom AG, believes that it could earn a greater return on its investment by reducing competition.3 The states argue that:

“The proposed transaction would eliminate Sprint as a competitor and reduce the number of [mobile network operators] MNOs with nationwide networks in the United States from four to three. The combined company would have a retail market share larger than the two largest MNOs today, Verizon and AT&T. In some areas, including in the New York City metropolitan area, the combined company’s share of subscribers would exceed 50%. The combined market share of Sprint and T-Mobile would result in an increase in market concentration that significantly exceeds the thresholds at which mergers are presumed to violate the antitrust laws. This increased market concentration will result in diminished competition, higher prices, and reduced quality and innovation.”4

Although the data table is redacted, the Complaint claims that the nation’s top 50 cellular market areas (CMAs) encompass about 50% of the U.S. population, and competition would be substantially lessened in each of the top 50 CMAs. The complaint argues many, particularly those with lower incomes who cannot pass a credit check and must purchase mobile wireless telecommunications service on a prepaid basis, rely on mobile wireless telecommunications services as their primary form of communications and do not have traditional wireline phone or broadband connections. If the merger is permitted, the “merger will negatively impact all retail mobile wireless telecommunications service subscribers but will be particularly harmful to prepaid subscribers”5

The states rely upon these claims to allege that “the transaction likely would substantially lessen competition in these local markets,” creating an actionable harm to the state’s citizens that justify the states’ standing to challenge the merger.

The complaint contains other supporting arguments and detail. The merger “would cost Sprint and T-Mobile subscribers more than $4.5 billion annually.”6 Other countries that have allowed consolidation from four to three competitors recorded an average price increase “between 17.2% and 20.5%.7There are significant barriers to entry that will be faced by any new provider, so potential competition will not be a factor. Finally, the states argue that the proposed commitments made to the FCC are insufficient to protect competition.8

The states have set a solid foundation from which to proceed. There is no obvious precedent that will permit T-Mobile and Sprint to end the case quickly, but protracted litigation will test the resolve and resources of all the parties.

#### They’ll never preempt---empirics, Supreme Court precedent, and statute.

Samp ’14 [Richard; 2014; Chief Counsel at the Washington Legal Foundation, J.D. from the University of Michigan; Minnesota Journal of Law, Science, and Technology, “The Role of State Antitrust Law in the Aftermath of Actavis,” vol. 15]

I. State Antitrust Law

Congress has passed a series of laws over the past 125 years designed to prevent businesses from engaging in anticompetitive conduct that results in higher prices for consumers. Most prominently, it adopted the Sherman Act in 1890.4 Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form or trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.”5 Among the types of agreements deemed to constitute per se violations of section 1 are agreements among competitors to limit output.6

Many states have also adopted antitrust statutes. While those laws tend to be similar to federal law, their language is not identical, and state courts routinely interpret state antitrust laws in ways that diverge sharply from federal law.7

Footnote 7:

7. Cf. Herbert Hovenkamp, State Antitrust in the Federal Scheme, 58 IND. L.J. 375, 377 n.10 (1983) (“As a general matter, state antitrust laws are substantively similar to federal antitrust law, and many state courts have held that case law interpreting the federal statutes is fully applicable to corresponding state statutes. . . . [H]owever, as a result either of statutory language or judicial interpretation, some state antitrust laws are now broader than federal law.” (internal citations omitted)).

End of Footnote 7.

For example, California’s antitrust statute, the Cartwright Act,8 diverges in a number of respects from federal antitrust law. The California Supreme Court recently cautioned, “[i]nterpretations of federal antitrust law are at most instructive, not conclusive, when construing the Cartwright Act . . . .”9

The U.S. Supreme Court has rejected claims that state antitrust law is preempted whenever it diverges from federal antitrust law. For example, the Court permitted the Attorneys General of Alabama, Arizona, California, and Minnesota to file antitrust claims under their respective state laws against a group of cement producers even though those state governments, because they did not purchase cement directly from the producers but rather purchased only through intermediaries, would not have been proper plaintiffs under federal antitrust law.10

Footnote 10:

10. California v. ARC Am. Corp., 490 U.S. 93 (1989); see id. at 101–02 (“There is no claim that the federal antitrust laws expressly pre-empt state laws permitting indirect purchaser recovery . . . . Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies.”).

End of Footnote 10.

Under federal law, when producers conspire to fix prices, only direct purchasers, and not subsequent indirect purchasers, are permitted to sue to recover losses incurred as a result of the conspiracy.11 In contrast, antitrust laws from the four states permitted recovery by indirect purchasers.12 The Supreme Court rejected the defendant cement producers’ assertion that federal antitrust law was intended to serve as a ceiling on businesses’ liability for engaging in anticompetitive conduct.13

Footnote 13:

13. Cf. id. at 105 (“Ordinarily, state causes of action are not pre-empted solely because they impose liability over and above that authorized by federal law, and no clear purpose of Congress indicates that we should decide otherwise in this case.” (citation omitted)).

End of Footnote 13.

It stated, “Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies. And on several prior occasions, the Court has recognized that the federal antitrust laws do not preempt state law.”14

### Spillover

#### It spills up to federal policy AND innovates the best version of the plan.

Spiegel ’21 [Julia; March 3; Deputy County Counsel in the Santa Clara County Counsel’s Office and Lecturer in International Policy Studies and Law at Stanford University, J.D. from Yale University, M.P.A. from the Princeton School of Public and International Affairs; Lawfare, “Embracing Foreign Affairs Federalism in a Post-Trump Era,” <https://www.lawfareblog.com/embracing-foreign-affairs-federalism-post-trump-era>]

When Others Have Failed to Act. In the current political climate, a more common scenario is when the federal government and/or global bodies have failed to act in response to a crisis. The global community’s halting response to the coronavirus pandemic is now the paradigmatic example. The absence of national and global action is a form of [quiescence](https://www.law.cornell.edu/supremecourt/text/343/579)—when national governments and global bodies effectively abdicate power—and localities should seize it.

Local to corporate and local to global action would be particularly impactful in the absence of national and global action or guidance. Such local initiatives could play a significant role in places like the [Rust Belt](https://www.forbes.com/sites/adammillsap/2017/01/09/the-rust-belt-didnt-adapt-and-it-paid-the-price/?sh=47b8b6787a3d), where many communities have felt that foreign affairs issues like global trade have failed to serve their interests. A more assertive approach to foreign affairs—driven by localities—could help to shift that dynamic. While this approach could create a “[patchwork](https://www-nejm-org.stanford.idm.oclc.org/doi/full/10.1056/NEJMp2006740)” of local responses, patchworks and coordination are not mutually exclusive. And innovation at the local level often spawns more robust and meaningful action at the federal and multilateral levels.

There may be instances where the patchwork creates competing outcomes or confusion with global partners over who represents America’s interests. But, due in part to globalization’s reach, a multifaceted approach to foreign affairs is already a feature of the American political landscape, as California’s shaping of the global car market has shown. The U.S. has more to gain by embracing this reality than by fighting it.

### Coordination/Patchwork

#### Litigation will be coordinated through multistate task forces – that solves.

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]

Coordination in multistate investigations and litigation

Coordination among state antitrust enforcers

State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states.[66] To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’.[67] This committee is comprised of 12 state attorneys general [68] and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.[69]

In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’.[70] This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’.[71] The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee[72] and has a representative from each NAAG member state.[73] The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.[74]

The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.)

#### The patchwork argument is a smokescreen for deregulation and lacks credibility

Andreen et. al ’8 [William, Robert Glicksman, Nina Mendelson, Rena Steinzor, and Shana Jones; May 29; Center for Progressive Reform Member Scholars; CPR Policy Analyst; Center for Progressive Reform, “Cooperative Federalism and Climate Change: Why Federal, State, and Local Governments Must Continue to Partner,” https://cpr-assets.s3.amazonaws.com/documents/federalismClimateChange.pdf; kp]

The ‘Patchwork’ Argument: Smokescreen for Deregulation

The notion that a patchwork of environmental protection requirements imposes an unacceptable burden on interstate commerce is both spurious and ahistorical. States have contributed significantly to the country’s efforts to protect public health since the country was founded.95 The CAA, for example, was enacted only after California established automobile tailpipe standards and other states were working toward their own vehicle emission standards.96 The federal government only established energy efficiency standards for appliances after states began doing so. Acid rain provisions were added to the CAA only after states began imposing aggressive sulfur dioxide controls.97

Regulated industries typically raise the patchwork argument only with respect to state requirements that are tougher than their federal counterparts, suggesting that deregulation is their true agenda. Nevertheless, business has simultaneously argued that devolution of federal authority to control environmentally damaging activities is desirable to state governments. If a patchwork of state requirements is truly anathema to business interests, then pressing for local control makes no sense – unless the agenda is to roll back federal regulation with the hope that weaker state regulation will take its place.98 When it appears that state regulation will be stronger than federal regulation, however, industry suddenly cries foul. Put simply, industry favors the weakest standards – and will press for whatever forum – local, state, or federal – it perceives to be most aligned with its deregulatory agenda.

Moreover, most industries, including the ones that are the most vociferous in their opposition to federal climate change regulation, have systems in place to ensure their compliance not only with different federal, state, and local laws, but also with the differing international legal regimes that affect their increasingly globalized business. The idea that large multinational companies are overburdened by more stringent state laws for administrative reasons is therefore not credible.

## 2nc---biz con

### A2 patent trolls

#### Patent trolls are not a problem. Increased litigation follows from more patents and stupid PTO rules.

Sipe ’16 [Matthew; 2016; J.D. at Yale Law School; Michigan Telecommunications and Technology Law Review, “Patent Privateers and Antitrust Fears,” Vol. 2, No. 1, http://repository.law.umich.edu/mttlr/vol22/iss2/1]

While the popular media has labeled patent trolls collectively as responsible for an increasing “onslaught of litigation,”139 the data suggest another story. The rise in overall patent assertions can be easily explained by the surge in issued patents, mandatory case disaggregation, and the increasingly low quality of patents issued by the PTO—particularly for software patents.

Utility patents are “the most common type of patent,”140 covering “any new and useful process, machine, manufacture, or composition of matter” (or improvement thereof).141 In practice, these patents cover everything from mechanical devices and chemical compounds to computer software and processes.142 In 1990, the PTO granted approximately 90,000 utility patents.143 In 2014, it granted 300,000, more than a 300% increase in less than 25 years.144 This increase in patent grants has tracked the increase in patent suits over the last 25 years very closely; in particular, both feature strident increases starting in 2009 compared to periods of measured growth in the 1990s.145

FIGURE 1. UTILITY PATENTS: FILLED VS. ISSUED, 1975 – 2012, omitted.

FIGURE 2. PATENT CASES COMMENCED, 1980-2012, omitted.

In other words, patent assertions have increased, but at a rate roughly proportional to the rate of patents being issued.148 Inventors are patenting more things, explaining at least some of the increase in patent suits and assertions.

Mandatory case disaggregation has also increased the number of apparent suits. The America Invents Act, passed in 2011, prohibits joining “multiple unrelated defendants to an action solely on the basis that they have each allegedly infringed the patent-in-suit.”149 This has directly led to the apparent surge in litigation since 2011 without actually changing the number of defendants or plaintiffs.150 Therefore, it is likely that at least part of the overall increase in patent litigation is largely illusory.

Finally, the PTO has granted an increasing number of software patents, which tend to be disproportionately litigation-prone. In 1991, software patents composed approximately 25% of all patents granted by the PTO; since 2011, a majority of patents granted have been software-related, and that proportion is still increasing.151 Lawsuits involving software-related patents accounted for 89% of the increase in defendants between 2007 and 2011 alone.152 And little wonder as to why—the software patents granted by the PTO have been imprecise in scope, and many should not have been issued at all. As the Government Accountability Office explained:

Language describing emerging technologies, such as software, may be inherently imprecise because these technologies are constantly evolving . . . claims in software patents sometimes define the scope of the invention by encompassing an entire function—like sending an email—rather than the specific means of performing that function . . . some patents, particularly software patents should never have been issued because they were obvious, not novel, or lacked definiteness.153

This failure has been so systemic as to necessitate some high-profile intervention from the Supreme Court,154 but it has not solved the problem entirely or provided clear guidance moving forward.155

In short, “the focus on the identity of the litigant”—troll or not—”rather than the type of patent” has been myopic.156 These low-quality, overbroad software patents—combined with the aforementioned surge in issued patents and mandatory case disaggregation—explains the increase in patent cases, not privateering activity.

### Link

#### Antitrust eviscerates corporate confidence---uncertainty triggers proactive chilling and cost of compliance deter resource use.

Hedger et al. ’20 [Patrick Hedger, Jessica Melugin, and Ryan Young; September 23; Vice President of Policy at the Taxpayers Protection Alliance, M.A. in Public Policy from George Mason University; Associate Director of the Center for Technology and Innovation at the Competitive Enterprise Institute; Senior Fellow at the Competitive Enterprise Institute, specializing in regulatory reform, trade policy, and antitrust regulation, M.A. in Economics from George Mason University; Competitive Enterprise Institute, “Repeal #NeverNeeded Antitrust Laws that Hinder COVID-19 Response,” no. 60]

Big technology firms have been invaluable in easing the burden of quarantine for millions of consumers 1 and businesses. 2 Unfortunately, the Department of Justice, the Federal Trade Commission (FTC), Congress,3 and many state attorneys general are continuing their antitrust investigations 4 into major tech firms like Google,5 Facebook,6 Apple,7 and Amazon.8 Such open-ended investigations cast a destructive shadow of uncertainty over a sector that has proven critical during the COVID-19 crisis.

Facebook helping people stay in touch, Apple providing apps for curbside pickup from small businesses, Amazon’s deliveries, and Google’s tools for keeping informed are all enormously beneficial to consumers. These companies should be left to innovate and serve consumers as creatively, quickly, and as innovatively as needed.9 Yet, as large tech companies try to adapt to this new environment, they may hesitate about certain innovations for fear of running afoul of antitrust rules. This provides no benefit to consumers. Therefore, this is no time to hobble tech companies with esoteric regulatory concerns.10

The real cost of antitrust is the innovation it prevents. The risk of precluding advances, synergies, and solutions that could prove critical to a struggling economy and a stressed people is too high to justify these investigations.

It is not just a chilling effect on innovative ideas and arrangements that can impair these companies, but also the time and energy required to comply with information requests. For instance, in response to a 48-state investigation led by Texas Attorney General Ken Paxton, Google had provided more than 100,000 pages of information by mid-April 2020.11 Forcing tech companies to use their large, but still limited resources to comply with paperwork requests of myriad antitrust investigations is counterproductive at a time when the company’s customers need them most.

#### It cascades across unrelated sectors AND the threat alone chills expenditures.

Crews ’19 [Clyde and Ryan; April 16; Vice President for Policy and Senior Fellow at the Competitive Enterprise Institute; Senior Fellow at the Competitive Enterprise Institute, M.A. in Economics from George Mason University; CEI, “The Case against Antitrust Law,” <https://cei.org/studies/the-case-against-antitrust-law/>]

Uncertainty. Antitrust regulation creates an enormous amount of economic uncertainty. Nobody knows how it will be used at a given time. If antitrust statutes are interpreted literally, potentially any firm, no matter how small, can be charged with an antitrust violation—or for dominating its relevant market, however defined. If a business sells goods at a lower price than its competitors, it can be charged with predatory pricing. If it sells goods at the same price as its competitors, it can be charged with collusion. And if it sells goods at a higher price than its competitors, it can be charged with abusing market power.

A century of case law has evolved some guidelines, but judicial precedents can be overturned any time a new case is brought. There are few bright-line legislative or judicial standards for antitrust enforcement. It is mostly guided by a mix of inconsistently enforced judicial precedents, regulators’ personal discretion, and political factors unrelated to market competition. Even the mere threat of antitrust enforcement can have a preemptive chilling effect on innovation, business strategies, and potential efficiency-enhancing arrangements.

Rent-seeking. Neo-Brandeisians rightly want to reduce rent-seeking, but they routinely propose policies that will backfire because of a common misunderstanding of how governments work in practice. Government employees do not operate with only the public interest in mind. They are human beings, with the same incentives and flaws as other human beings. They want to increase their budgets and power and enjoy the publicity that accompanies big cases. It also makes regulators especially vulnerable to what is known as a Baptist-and-boot-legger dynamic. In Clemson University economist Bruce Yandle’s classic example, a moralizing Baptist and a profit-seeking bootlegger will both favor a law requiring liquor stores to close on Sundays, though for different reasons. A true-believing “Baptist” in Congress or at the Justice Department or the FTC would be inclined to listen seriously to the entreaties of corporate “bootleggers” who can come up with virtuous-sounding reasons for why regulators should give their businesses special favorable treatment.36

Oracle, one of Microsoft’s rivals, ran its own independent Microsoft investigation during that company’s antitrust case, for what it alleged were Baptist-style reasons. “All we did is try to take information that was hidden and bring it to light,” said Oracle CEO Larry Ellison. “I don’t think that was arrogance. I think it was a public service.”37 Former Sen. Orrin Hatch (R-UT), who counted Oracle among his constituents, was one of the loudest anti-Microsoft voices in Congress. Around that time, he also received $17,500 donations from executives at Netscape, AOL, and Sun Microsystems. Perhaps heeding Hatch’s admonition that, “If you want to get involved in business, you should get involved in politics,” Microsoft expanded its presence in Washington from a small outpost at a Bethesda, Maryland, sales office to a large downtown Washington office with a full-time staff plus multiple outside lobbyists.38 Microsoft quickly went from a virtual non-entity in Washington to the 10th-largest corporate soft money campaign donor by the 1997-1998 election cycle. Sen. Hatch’s campaign was among the beneficiaries.39

The lines between Baptist and boot- legger can be blurry, and some actors play both parts. But such ethical dynamics are an integral part of antitrust regulation in practice.

Government usually stifles competition. If antitrust regulation is to be retained, it should not be a first-resort policy. If a company has an overwhelming competitive advantage, it is important to first ask what is causing it. If the advantage is due to superior performance, then consumers are not being harmed.

In most cases, dominance does not last long, as evidenced by how quickly any list of America’s largest companies changes from year to year. If a company does remain dominant for a long period of time, one of two possibilities must be true. The first option is that it continues to be consumers’ preferred option. The second is that it is engaging in rent-seeking behavior. In the first case, there is no need for an antitrust intervention. In the second case, the solution is not antitrust regulation, but to take away the government’s power to tilt the scales in rent-seekers’ favor.

Think long term. Robert Bork, though famous for his antitrust skepticism, still favors some antitrust regulation. He merely favors a more restrained usage than the Brandeis school. As he writes in The Antitrust Paradox, “Antitrust is valuable because in some cases it can achieve results more rapidly than can market forces. We need not suffer losses while waiting for the market to erode cartels and monopolistic mergers.”40

Bork’s statement is problematic for several reasons. How do regulators and judges know which cases are causing consumer harm and which are not? How do they decide which cases to pursue? Cases also often take years to resolve. Assuming regulators identify a valid case, how would they, and the judges who hear the case, know if market activity could address the problem by the time the case is decided? Do the benefits of regulatory action exceed the court and enforcement costs? Are the affected companies in a position to capture the regulators?

More to the point, does the short-term benefit come at a greater long-term cost? An enforcement action now could have a deterrent effect on future mergers, contracts, and innovations, including in unrelated industries. The consumer harm from these could well exceed the short-term benefits of a short-term improvement on market outcomes—assuming that regulators are consistently capable of such a feat.

### A2: no IL

#### Chilling---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.

## 2nc---Advantage 1

#### Decline doesn’t cause war

**Clary 15** – Christopher Clary, PhD in Political Science from MIT, M.A. in National Security Affairs, Postdoctoral Fellow, Watson Institute for International Studies, Brown University, 2015 (“Economic Stress and International Cooperation: Evidence from International Rivalries,” April 25th, Available Online via SSRN Subscription)

Do economic downturns generate pressure for diversionary conflict?

Or might downturns encourage austerity and economizing behavior in foreign policy? This paper provides new evidence that economic stress is associated with conciliatory policies between strategic rivals. For states that view each other as military threats, the biggest step possible toward bilateral cooperation is to terminate the rivalry by taking political steps to manage the competition. Drawing on data from 109 distinct rival dyads since 19i9 50, 67 of which terminated, the evidence suggests rivalries were approximately twice as likely to terminate during economic downturns than they were during periods of economic normalcy. This is true controlling for all of the main alternative explanations for peaceful relations between foes (democratic status, nuclear weapons possession, capability imbalance, common enemies, and international systemic changes), as well as many other possible confounding variables. This research questions existing theories claiming that economic downturns are associated with diversionary war, and instead argues that in certain circumstances peace may result from economic troubles. I define a rivalry as the perception by national elites of two states that the other state possesses conflicting interests and presents a military threat of sufficient severity that future military conflict is likely. Rivalry termination is the transition from a state of rivalry to one where conflicts of interest are not viewed as being so severe as to provoke interstate conflict and/or where a mutual recognition of the imbalance in military capabilities makes conflict-causing bargaining failures unlikely. In other words, rivalries terminate when the elites assess that the risks of military conflict between rivals has been reduced dramatically. This definition draws on a growing quantitative literature most closely associated with the research programs of William Thompson, J. Joseph Hewitt, and James P. Klein, Gary Goertz, and Paul F. Diehl.1 My definition conforms to that of William Thompson. In work with Karen Rasler, they define rivalries as situations in which “[b]oth actors view each other as a significant political-military threat and, therefore, an enemy.”2 In other work, Thompson writing with Michael Colaresi, explains further: The presumption is that decisionmakers explicitly identify who they think are their foreign enemies. They orient their military preparations and foreign policies toward meeting their threats. They assure their constituents that they will not let their adversaries take advantage. Usually, these activities are done in public. Hence, we should be able to follow the explicit cues in decisionmaker utterances and writings, as well as in the descriptive political histories written about the foreign policies of specific countries.3 Drawing from available records and histories, Thompson and David Dreyer have generated a universe of strategic rivalries from 1494 to 2010 that serves as the basis for this project’s empirical analysis.4 This project measures rivalry termination as occurring on the last year that Thompson and Dreyer record the existence of a rivalry.

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

#### No LIO impact

G. John **Ikenberry 18**. Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, also a Global Eminence Scholar at Kyung Hee University in Seoul. 2018. “Why the Liberal World Order Will Survive.” Ethics & International Affairs, vol. 32, no. 01, pp. 17–29.

In this essay I look at the evolving encounters between rising states and the post-war Western international order. My starting point is the classic “power transition” perspective. Power transition theories see a tight link between international order—its emergence, stability, and decline—and the rise and fall of great powers. It is a perspective that sees history as a sequence of cycles in which powerful or hegemonic states rise up and build order and dominate the global system until their power declines, leading to a new cycle of crisis and order building. In contrast, I offer a more evolutionary perspective, emphasizing the lineages and continuities in modern international order. More specifically, I argue that although America’s hegemonic position may be declining, the liberal international characteristics of order—openness, rules, multilateral cooperation—are deeply rooted and likely to persist. This is true even though the orientation and actions of the Trump administration have raised serious questions about the U.S. commitment to liberal internationalism. Just as importantly, rising states (led by China) are not engaged in a frontal attack on the American-led order. While struggles do exist over orientations, agendas, and leadership, the non-Western developing countries remain tied to the architecture and principles of a liberal-oriented global order. And even as China seeks in various ways to build rival regional institutions, there are stubborn limits on what it can do. Power Transitions and International Order There is wide agreement that the world is witnessing a long-term global power transition. Wealth and power is diffusing, spreading outward and away from Europe and the United States. The rapid growth that marked the non-Western rising states in the last decade may have ended, and even China’s rapid economic ascendency has slowed. But the overall pattern of change remains: the “rest” are gaining ground on the “West.” While there is wide agreement that the world is witnessing a global power transition, there is less agreement on the consequences of power shifts for international order. The classic view is advanced by realist scholars, such as E. H. Carr, Robert Gilpin, Paul Kennedy, and William Wohlforth, who make sweeping arguments about power and order. These hegemonic realists argue that international order is a by-product of the concentration of power. Order is created by a powerful state, and when that state declines and power diffuses, international order weakens or breaks apart. Out of these dynamic circumstances, a rising state emerges as the new dominant state, and it seeks to reorganize the international system to suit its own purposes. In this view, world politics from ancient times to the modern era can be seen as a series of repeated cycles of rise and decline. War, protectionism, depression, political upheaval—various sorts of crises and disruptions may push the cycle forward. This narrative of hegemonic rise and decline draws on the European and, more broadly, Western experience. Since the early modern era, Europe has been organized and reorganized by a succession of leading states and would-be hegemons: the Spanish Hapsburgs, France of Louis XIV and Napoleon, and post-Bismarck Germany. The logic of hegemonic order comes even more clearly into view with Pax Britannica, the nineteenth-century hegemonic order based on British naval and mercantile dominance. The decline of Britain was followed by decades of war and economic instability, which ended only with the rise of Pax Americana. For hegemonic realists, the debate today is about where the world is along this cyclical pathway of rise and decline. Has the United States finally lost the ability or willingness to underwrite and lead the post-war order? Are we in the midst of a hegemonic crisis and the breakdown of the old order? And are rising states, led by China, beginning to step forward in efforts to establish their own hegemonic dominance of their regions and the world? These are the lurking questions of the power transition perspective. But does this vision of power transition truly illuminate the struggles going on today over international order? Some might argue no—that the United States is still in a position, despite its travails, to provide hegemonic leadership. Here one would note that there is a durable infrastructure (or what Susan Strange has called “structural power”) that undergirds the existing American-led order. Far-flung security alliances, market relations, liberal democratic solidarity, deeply rooted geopolitical alignments—there are many possible sources of American hegemonic power that remain intact. But there may be even deeper sources of continuity in the existing system. This would be true if the existence of a liberal-oriented international order does not in fact require hegemonic domination. It might be that the power transition theory is wrong: the stability and persistence of the existing post-war international order does not depend on the concentration of American power. In fact, international order is not simply an artifact of concentrations of power. The rules and institutions that make up international order have a more complex and contingent relationship with the rise and fall of state power. This is true in two respects. First, international order itself is complex: multilayered, multifaceted, and not simply a political formation imposed by the leading state. International order is not “one thing” that states either join or resist. It is an aggregation of various sorts of ordering rules and institutions. There are the deep rules and norms of sovereignty. There are governing institutions, starting with the United Nations. There is a sprawling array of international institutions, regimes, treaties, agreements, protocols, and so forth. These governing arrangements cut across diverse realms, including security and arms control, the world economy, the environment and global commons, human rights, and political relations. Some of these domains of governance may have rules and institutions that narrowly reflect the interests of the hegemonic state, but most reflect negotiated outcomes based on a much broader set of interests. As rising states continue to rise, they do not simply confront an American-led order; they face a wider conglomeration of ordering rules, institutions, and arrangements; many of which they have long embraced. By separating “American hegemony” from “the existing international order,” we can see a more complex set of relationships. The United States does not embody the international order; it has a relationship with it, as do rising states. The United States embraces many of the core global rules and institutions, such as the United Nations, International Monetary Fund (IMF), World Bank, and World Trade Organization. But it also has resisted ratification of the Law of the Sea Convention and the Convention on the Rights of the Child (it being the only country not to have ratified the latter) as well as various arms control and disarmament agreements. China also embraces many of the same global rules and institutions, and resists ratification of others. Generally speaking, the more fundamental or core the norms and institutions are—beginning with the Westphalian norms of sovereignty and the United Nations system—the more agreement there is between the United States and China as well as other states. Disagreements are most salient where human rights and political principles are in play, such as in the Responsibility to Protect. Second, there is also diversity in what rising states “want” from the international order. The struggles over international order take many different forms. In some instances, what rising states want is more influence and control of territory and geopolitical space beyond their borders. One can see this in China’s efforts to expand its maritime and political influence in the South China Sea and other neighboring areas. This is an age-old type of struggle captured in realist accounts of security competition and geopolitical rivalry. Another type of struggle is over the norms and values that are enshrined in global governance rules and institutions. These may be about how open and rule-based the system should be. They may also be about the way human rights and political principles are defined and brought to bear in relations among states. Finally, the struggles over international order may be focused on the distribution of authority. That is, rising states may seek a greater role in the governance of existing institutions. This is a struggle over the position of states within the global political hierarchy: voting shares, leadership rights, and authority relations. These observations cut against the realist hegemonic perspective and cyclical theories of power transition. Rising states do not confront a single, coherent, hegemonic order. The international order offers a buffet of options and choices. They can embrace some rules and institutions and not others. Moreover, stepping back, the international orders that rising states have faced in different historical eras have not all been the same order. The British-led order that Germany faced at the turn of the twentieth century is different from the international order that China faces today. The contemporary international order is much more complex and wide-ranging than past orders. It has a much denser array of rules, institutions, and governance realms. There are also both regional and global domains of governance. This makes it hard to imagine an epic moment when the international order goes into crisis and rising states step forward—either China alone or rising states as a bloc—to reorganize and reshape its rules and institutions. Rather than a cyclical dynamic of rise and decline, change in the existing American-led order might best be captured by terms such as continuity, evolution, adaptation, and negotiation. The struggles over international order today are growing, but it is not a drama best told in terms of the rise and decline of American hegemony. Sources of Continuity in Liberal International Order If the liberal international order endures, it will be because it is based on more than American hegemonic order. To be sure, the United States did give shape to a distinctive post-war liberal hegemonic system, and many of its features— including the American-led alliance system and multilateral economic governance arrangements—are themselves quite durable. But the broader features of the modern international order are the result of centuries of struggle over its organizing principles and institutions. Rising states face an international order that is long in the making, one that presents these non-Western developing states with opportunities as well as constraints. The struggles over the existing international order will reshape the rules and institutions in the existing system in various ways. But rising states are not simply or primarily “revisionist” states seeking to overturn the order; rather, they are seeking greater access and authority over its operation. Indeed, the order creates as many safeguards and protections for rising states as it creates obstacles and constraints. For example, the World Trade Organization provides rules and mechanisms for rising states to dispute trade discrimination and protect access to markets. After all, more generally, it was this liberal-oriented international order—its openness and rules—that provided the conditions for China and other rising states to rise. Indeed, if the liberal international order survives, it will be in large part due to the fact that the constituencies for such an order that stretch across the Western and the non-Western worlds are larger than the constituencies that oppose it. We can look more closely at these sources of continuity and constituency.

### No Patent Holdups---2NC

#### Patent holdup theory is as wrong as the Peaceful Maya theory.

Haber ’17 [Stephen and Alexander Galetovic; March 2; Political Science Professor at Stanford University; Economics Professor at Universidad de los Andes in Santiago; Journal of Competition Law & Economics, “The Fallacies of Patent-Holdup Theory,” Vol. 13, No. 1]

I. INTRODUCTION

Until the late 1980s, archaeologists maintained that the Ancient Maya were a peace-loving people whose elites were primarily concerned with the scholarly study of astronomy and mathematics. They believed this conjecture despite the fact that one could not walk through a Mayan ruin without tripping over immense stelae depicting grotesquely violent images of victorious warriors subjugating their captives.

The process by which archaeologists created a theory about peaceful forest dwellers in the face of self-evident facts to the contrary is a testament to the power of fundamental fallacies. Their first fallacy was the idea that the inscriptions on the stelae were different from other glyph-based writing systems: instead of being a mix of whole words and phonetic sounds, as is the case with Egyptian hieroglyphic and cuneiform, archaeologists and epigraphers maintained that each symbol in the Mayan script represented an entire word or concept. That fallacy led them into a second fallacy: they maintained that non-calendrical Mayan hieroglyphs were indecipherable. That fallacy allowed the emergence of a third fallacy: because the theory of peace-loving forest people could not be tested against written evidence, the gruesome images on the stelae could be explained away as depicting mythical gods, not actual people. Thus, the archaeologists arrived at the false conclusion that the Maya were peaceful folk.

The fact that it took four decades for these fallacies to be overturned, one by one, is a testament to the reluctance of scholars to reject fashionable theories.1 In point of fact, a Russian epigrapher had figured out the principles of Mayan translation in 1952, but it took two decades for American scholars to accept that his theory of Mayan writing was correct and theirs was wrong. It then took another decade for enough monumental inscriptions to be translated to convince archaeologists that the stelae did not depict mythical gods, but instead told the political history of Mayan kings—their birth, military conquests, and death. It took still another decade before a consensus emerged that the evidence that had been right in front of archaeologists all along contradicted their theory.

It would be comforting if the only field ever led astray by fundamental fallacies was Mayan archaeology, but that is hardly the case. Faulty premises often lead researchers toward conclusions that do not fit the facts—so much so that Nobel Laureate Richard Feynman made it the subject of his famous commencement address at the California Institute of Technology, in which he stressed the importance of bending over backward to do every test that might falsify a theory.2

A. An Influential Theory

Our concern here is with how fundamental fallacies gave rise to patent-holdup theory, which has guided antitrust and competition authorities around the world for nearly two decades. In the early 2000s, legal academics and antitrust economists asked an important question: does a decentralized system of technology development, in which complex, interoperable information technology (IT) products rely on standard-essential patents (SEPs) owned by many firms, allow SEP owners to “hold up” manufacturers, thereby stifling innovation and hurting consumers in the form of higher prices and lower-quality products?

The answer—patent-holdup theory—consists of five nested claims. First, that patent owners can systematically overcharge manufacturers for licenses to their patents through the economic mechanism of holdup—the opportunistic appropriation of a downstream firm's quasi rents (revenues in excess of short-run costs). Second, that when there are multiple patent holders, each practicing holdup on a downstream firm, cumulative patent royalty rates become astronomically high—a phenomenon patent-holdup theorists termed “royalty stacking.” Third, that the holdup problem is exacerbated when patented technologies are included in the industry standards necessary to make IT products interoperable and compatible. Fourth, that patent holdup, royalty stacking, and the inclusion of patented technologies in industry standards are strangling innovation, most particularly in SEP-intensive IT products. Fifth, that the government must intervene to solve this problem; the market, left on its own, will fail.

Carl Shapiro's seminal article provides a clear statement of the threat posed by patent holdup to innovation:

The holdup problem is worst in industries where hundreds if not thousands of patents, some already issued, others pending, can potentially read on a given product. In these industries, the danger that a manufacturer will step on a land mine is all too real. The result will be that some companies avoid the mine field altogether, that is, refrain from introducing certain products for fear of holdup.3

He clearly articulates the need for a public policy intervention: “I submit that this holdup problem is very real today, and that both patent and antitrust policymakers should regard holdup as a problem of first order significance in the years ahead.”4

The claim that patent holdup is common and is a threat to innovation can be found in any number of scholarly articles. Joseph Farrell, John Hayes, Carl Shapiro, and Theresa Sullivan state that “surprise hold-up may be largely a transfer, but anticipation of hold-up encourages a range of inefficient forms of self-protection, such as postponing or minimizing investment, or ensuring that standards use only antique technology.”5 Mark Lemley and Carl Shapiro concur:

In the long run, if products are expected to be subject to some degree of holdup, the firm may not find it worth incurring the costs necessary to develop, manufacture, and sell the product. Assertions based on the shut-down condition that royalty stacking is somehow a minor problem or that royalty stacking cannot stifle innovation or hinder the market penetration of products that have been developed are simply unfounded.6

Most recently, Fiona Scott Morton and Carl Shapiro warn that patent holdup and its related mechanisms threaten the Internet of Things (IoT), and suggest the need for antitrust intervention:

Failure to prevent Patent Holdup relating to tomorrow's information technology and communications standards is likely to cause significant social welfare loss in the years ahead. If new and more effective private solutions relating to standard setting do not emerge to promote innovation and protect consumers, antitrust enforcement is one of the only remaining remedies that seems feasible.7

Patent-holdup theory has also been influential among antitrust authorities around the world. Several Federal Trade Commission (FTC) reports8 and a joint Department of Justice (DOJ) and FTC report9 discuss the threat to innovation posed by patent holdup and royalty stacking, citing the academic literature. For example, one FTC report states:

Unless downstream actors—whether innovators or manufacturers—can mitigate the problem [of patent holdup], they may have to choose between the risk of being sued for infringement after they sink costs into invention or production, or dropping innovative or productive efforts altogether. Either option can injure economic welfare.10

These views are echoed by agency heads, such as the former chair of the FTC, the former Deputy Attorney General for Antitrust, and the European Competition Commissioner, who signal that they are willing to take action about the problem.11

Patent-holdup theory is also mentioned in amicus briefs that argue that patent holdup is a common occurrence. For example, a 2006 brief file by 52 intellectual property professors submitted in support of the defendant in eBay, Inc. v. MercExchange, L.L.C. states that:

[S]uch inappropriate “holdups” occur on a regular basis under the Federal Circuit's mandatory-injunction standard. Patentees can obtain revenue in excess of the value of their technology by threatening to enjoin products that are predominantly noninfringing and in which the defendant has made significant irreversible investments.12

It should therefore not be surprising that courts have been influenced by patent-holdup theory. For example, in eBay, Justice Kennedy's concurring opinion cites an FTC report that warns of the impact of patent holdup by firms that do not themselves practice their patents:

An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees. For these firms, an injunction, and the potentially serious sanctions arising from its violation, can be employed as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent. When the patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for the infringement and an injunction may not serve the public interest.13

The landmark Supreme Court eBay decision is not an outlier. Jonathan Barnett identifies thirty-seven federal court decisions that mention “patent holdup” or “royalty stacking.”14

B. The Stelae That Contradicted the Theory

Like the theory of the peaceful Maya, patent-holdup theory had its own set of facts—stelae, as it were—that contradicted the theory. Patent-holdup theorists asserted that innovation in SEP-intensive IT products was under threat: excessive royalties were discouraging new firm entry and reinvestment by existing firms. They called particular attention to the threat to innovation in mobile telephones and personal computers, as well as in extensions of those products in the IoT.15

Economists measure rates of innovation by examining relative rates of change of quality-adjusted prices,16 and one can download the publicly available, product-by-product, quality-adjusted price data compiled by the Bureau of Labor Statistics in order to carry out an analysis of innovation rates across products and within products over time.17 An analysis of that data shows that from 1997 to 2013, rates of innovation in phone equipment (which includes low-tech items such as fax machines and landline phones, as well as wireless phones) was 10 percent per annum faster than the economy-wide average. The data show that the rate of innovation in portable and laptop computers was faster still—31 percent per annum faster than the economy-wide average. Similar rates of innovation are observed in other SEP-intensive IT products such as video equipment, audio equipment, desktop computers, and televisions. Furthermore, rates of innovation in SEP-intensive IT products have not slowed over time relative to the rates of innovation in similar, non-SEP-intensive IT products.18 For example, the rate of innovation in SEP-intensive laptop computers compared with non-SEP-intensive mainframe computers shows that SEP intensity was associated with faster innovation.19

There are other hallmarks of innovation beyond falling quality-adjusted relative prices: one would expect to see rapidly increasing output even in the face of falling prices; and, because innovation is typically characterized by Schumpeterian creative destruction, one would also expect to see high levels of firm entry and exit. This is precisely what researchers do see when they examine data on the canonical case of the mobile phone industry. Between 1994 and 2013, the number of SEP holders increased from 2 to 128. Patent-holdup theory would predict that this increase should have dramatically slowed the rate of innovation. That prediction did not obtain in reality, however. Prices of mobile devices dropped very fast, while output grew sixty-two-fold. During this same period, there was rapid entry of new firms into the manufacture of phones and tablets—so much so that industrial concentration, measured with the number of devices sold, actually fell in this industry over time.20

According to patent-holdup theory, excessive patent royalties cause slow rates of innovation. As an empirical matter, the aggregate royalties paid by licensees in any industry can be estimated on the basis of the SEC 10-K and 40-F filings of the patent-licensing firms.21 The data on the canonical case of mobile phones shows that the cumulative royalty yield from the twenty-one largest patent licensors in the mobile phone value chain was only 3.3 percent of a mobile phone's average sales price in 2015. That ratio has been fairly stable since at least far back as 2007.22 Researchers have parameterized royalty-stacking models from the patent-holdup literature using actual price and quantity data, and have discovered that the royalty yield predicted by the models is more than twenty times higher than the actual royalty yield and about four-fifths of the price of a smartphone. They have also found that no individual patent licensor earns an individual royalty consistent with the hypothesis that it operated as a monopolist.23

The facts of fast and continuous innovation in the mobile phone industry—one of the stelae of patent-holdup theory—are evident to anyone with a smartphone in their pocket. Three decades ago, a mobile phone cost the current equivalent of $10,000, was the size of a brick, weighed a kilo, and enabled its user to make a half-hour call before going dead. Today, a smartphone has more computational power than the supercomputers that guided the Apollo missions to the moon, allows a user to produce and share data, video, and audio files with anyone on the planet, costs an average of $300—and also happens to make a phone call.

At the same time that there are self-evident stelae contradicting patent-holdup theory, there is no positive evidence in support of its core predictions. Damien Geradin and Miguel Rato,24 Damien Geradin, Anne Layne-Farrar and Jorge Padilla,25 Vincenzo Denicolò, Damien Geradin, Anne Layne-Farrar, and Jorge Padilla,26 Richard Epstein, F. Scott Kieff, and Daniel Spulber,27 Kirti Gupta,28 Anne Layne-Farrar,29 J. Gregory Sidak,30 and Edward Egan and David Teece31 review the literature on patent holdup, patent thickets, and royalty stacking.32 All of these studies reach the same general conclusion, which is perhaps best summed up by Layne-Farrar: “Certainly the theories have been developed, but the empirical support is still lacking. Despite the fifteen years that proponents of the theories have had to amass evidence, the empirical studies conducted thus far have not shown that holdup or royalty stacking is a common problem in practice.”33

C. Three Fundamental Fallacies and Their Origin

When theory and evidence disagree, there is either something wrong with the theory or something wrong with the evidence. We think that there is something wrong with the theory.

Patent-holdup theory conflates two different economic mechanisms: holdup and market power. Holdup means that one firm appropriates another firm's quasi rent—its revenues minus its short-run costs—through opportunistic behavior. A firm that is being held up, by definition, does not generate enough revenue to cover its long-run costs. Therefore, the firm will not reinvest once its capital wears out. This is not a long-run equilibrium. Market power, by contrast, means that a firm can set prices such that it appropriates a monopoly rent from a market. The exercise of market power can be a long-run equilibrium, because the downstream firms will cover their long-run costs and continue to reinvest as their capital equipment wears out.34 Thus, holdup and the exercise of market power are two different, mutually inconsistent economic mechanisms. One cannot simultaneously have a long-run equilibrium and not have a long-run equilibrium.

The conflation of holdup and market power leads to three fallacies that underpin patent-holdup theory. Once the mechanics of holdup are loosened from their moorings in economic theory, it becomes possible to simultaneously claim that patent holdup is a variant of holdup as it is understood in mainstream economics and define it in ways that are inconsistent with the meaning of holdup as it is understood in mainstream economics. Patent holdup elides key assumptions of the standard theory and transforms necessary conditions for holdup into sufficient conditions for holdup. The implications are fundamental. In the established theory, firms—working together—will make structural, contractual, and behavioral adaptations in order to prevent holdup, thereby sustaining trade and investment in equilibrium. In patent-holdup theory, by contrast, firms cannot adapt and solve the problem wrought by opportunistic renegotiation of a contract, because the game begins after the R&D is completed and manufacturers invest. Adaptations to prevent holdup are ruled out by construction, and market failure is inevitable.

The conflation of holdup and market power leads to a second fallacy. Patent-holdup theory claims that the same manufacturing firms can be held up many times over, resulting in a phenomenon called royalty stacking. In point of fact, however, holdup cannot occur many times over to the same firm. A firm's quasi rents (the difference between its revenues and its short-run costs) can be extracted only once. Any attempt to extract more revenues would cause the firm to shut down. Royalty stacking, by contrast, is about the exercise of market power by multiple input suppliers to downstream firms. Although this multiplicity of input suppliers might be an inefficient organization of a market, it nonetheless can be a long-run equilibrium, unlike holdup.

To claim that market power is being exercised, one needs to identify its source. In royalty stacking, the source is the patents themselves. A patent confers a temporary, limited property right that might confer some market power—and does so by design. Thus, in order to claim that there is a public policy problem, one needs to claim that the patents in question confer market power in excess of that which is conferred by the patent grants themselves. What could the source of that excess market power be? According to the theory, patent-holding firms are able to appropriate more than their incremental contribution to a product's value by virtue of the fact that their technologies have been made part of a standard. The users of the technology are locked into that standard and consequently can be subjected to patent holdup.

The conflation of holdup and market power leads to a third fallacy: patented technologies that are part of an industry standard add little or no value to the markets that they help to create. There are two problems with this fallacy—one theoretical and the other empirical. The theoretical problem is, as Nobel Prize winner Kenneth Arrow showed in 1962, that when an innovation is “drastic” (that is, much better than the alternatives on offer) a profit-maximizing monopoly will charge less than the technology's incremental value. The empirical problem is that the whole point of standard development organizations (SDOs) in IT industries is to make large technological jumps at a fast pace, so that manufacturers may produce superior products that consumers will adopt enthusiastically, thereby increasing the revenues of all the industry stakeholders.35 They are not in the business of small incremental improvements; they are in the business of creating drastic innovations.

#### Patent holdup is a bold-faced lie.

Sidak ’15 [J. Gregory; 2015; Chairman of Criterion Economics, L.L.C.; the Georgetown Law Review Online, “The Antitrust Division's Devaluation of Standard-Essential Patents,” Vol. 104]

Ms. Hesse assumes, incorrectly, that the theoretical and empirical underpinnings of the patent-holdup and royalty-stacking conjectures are robust, and her letter's analysis relies on an outdated account of those conjectures. Referencing an article from 2007 by lawyer Mark Lemley of Stanford and economist Carl Shapiro of Berkeley that introduced the patent-holdup and royalty-stacking conjectures, Ms. Hesse states that "[t]he economic bargaining model underlying claims of hold up has been studied extensively and applied to the standard-setting context." 45 Ms. Hesse neglects to say that the Lemley-Shapiro article was funded by companies that were the major proponents of the IEEE's 2015 bylaw amendments—Apple, Cisco, Intel, and Microsoft46 –and she ignores the many articles, which first started to appear in 2007, that have refuted the Lemley-Shapiro model on both theoretical and empirical grounds. 47 For the same reason, the 2007 report of the Department of Justice and the Federal Trade Commission that Ms. Hesse cites is also unreliable evidence in 2015 of the plausibility of the patent-holdup conjecture. 48 By early 2015, more than two dozen economists and lawyers had disproved or disputed the numerous assumptions and predictions of the patent-holdup and royalty-stacking conjectures. 4 9 Ms. Hesse's letter ignores all of that scholarship. 5 0 Her letter even ignores concessions made by the leading proponents of the patent-holdup and royalty- stacking conjectures concerning the unavailability of injunctions to SEP holders and the infrequency with which licensor opportunism actually occurs. In 2014, Carl Shapiro and Fiona Scott-Morton, who previously served as chief economists at the Antitrust Division, said that "the risk of injunctions appears to be quite low" and that "[m]any holders of SEPs do license at FRAND rates, perhaps due to concerns about reputation or retaliatory conduct by others." 51 Some scholars are skeptical of whether patent holdup and royalty stacking have ever occurred in the implementation of a standard. In 2013, Commissioner Joshua Wright of the Federal Trade Commission (FTC) emphasized that, "[d]espite the amount of attention patent hold-up has drawn from policymakers and academics, there have been relatively few instances of litigated patent hold-up among the thousands of standards adopted. 52 In 2014, Alexander Galetovic, Stephen Haber, and Ross Levin found that, "over long periods[,] SEP industries tend to show better performance than most other industries," and that innovation appears to grow fastest in SEP industries. 53 In 2015, Galetovic, Haber, and Levin also empirically refuted the classic hypothesis of the patent-holdup conjecture-that "hold-up will harm downstream consumers in the form of slower price declines and slower improvements in product quality and variety"-by showing that the quality-adjusted prices for products in SEP industries decline faster than quality-adjusted prices for products in non-SEP industries. 54 All of these empirical and theoretical challenges to the patent-holdup and royalty-stacking conjectures are conspicuously absent from Ms. Hesse's letter. Instead, she warns parties not to say that patent holdup and royalty stacking are nonexistent problems. 55

#### Reputation regulates holdup. Betraying your friends leads them to cross you later.

Wright ’13 [Joshua; September 12; Commissioner of the Federal Trade Commissioner; Center for the Protection of Intellectual Property Inaugural Academic Conference: The Commercial Function of Patents in Today’s Innovation Economy, “SSOs, FRAND, and Antitrust: Lessons from the Economics of Incomplete Contracts,” https://www.ftc.gov/sites/default/files/documents/public\_statements/ssos-frand-and-antitrust-lessons-economics-incomplete-contracts/130912cpip.pdf]

Thus far, as a simplifying assumption, I’ve largely ignored the role of reputational capital and self-enforcement in evaluating the efficiency of SSO contracts. Despite the amount of attention patent hold-up has drawn from policymakers and academics, there have been relatively few instances of litigated patent hold-up among the thousands of standards adopted.35 This begs the question of why – if incomplete SSO contracts are inherently and systematically imperfect as suggested by some – the empirical evidence of patent hold-up is so unremarkable. Reputational costs offer one possible answer – that is, the decision to engage in hold-up results in short-term gains than can easily be overwhelmed in a “repeated game” setting.36 Indeed, most firms and IPR holders are repeat players that hope both to license SEPs and to have their technology incorporated in subsequent standards. A reputation for engaging in patent hold-up would make it more difficult to convince SSOs and their members to adopt a firm’s technology in the future, which would reduce the firm’s ability to earn licensing revenue in the future. In addition, for firms that contribute patents to SSOs and implement standards in products, a reputation for hold-up as a licensor could affect the firm’s position when operating on the other side of the bargaining table as a licensee.

#### No patent holdup or royalty stacking.

Barnett ’20 [Jonathan; April; Law Professor at the University of Southern California; Center for the Protection of Intellectual Property, “Are There Really Patent Thickets?” https://cip2.gmu.edu/wp-content/uploads/sites/31/2020/04/Barnett-The-End-of-Patent-Groupthink.pdf]

A. Replacing Conjecture with Data

It is important to appreciate that the shift in SEP antitrust policy is firmly grounded in a recent but already well-developed body of empirical research. This point deserves some emphasis, because litigators, regulators, and, more surprisingly, scholarly commentators who continue to rely on patent holdup theories often do not seem to take this evidence into account. That research has done what academic, regulatory and industry proponents of patent holdup and royalty stacking theories have never done, namely, subject these theoretical assertions to empirical inquiry to verify that they provide an accurate picture of real-world innovation markets, rather than relying on stylized models in which a theory can never be more than “plausible” under “reasonable assumptions.”

In this case, it turns out that the old joke about the economist’s magical can opener is brutally true.11

Scholars who had advanced these theories had argued that profit-maximizing SEP owners would generate an aggregate royalty burden that would dramatically inflate device prices in the end-user market.12 In some cases, these arguments referred to anecdotal reports, or simply added up publicly announced royalty rates, that SEP owners were collectively charging smartphone producers aggregate royalty burdens representing double-digit percentages of the sales price.13 Empirical researchers that have made systematic efforts to collect and analyze royalty data have failed to find support for these claims. Using various methodologies, researchers have found that estimated total royalty burdens are in the single to mid-digits as a percentage of the device price.14 Additionally, researchers have found that the royalty-stacking hypothesis is incompatible with the performance of the 3G and 4G wireless markets over an almost two-decade period during which device sales grew dramatically while, adjusted for increased functionality, device prices fell.15 In light of this discrepancy between theories of market failure and evidence of market success, the U.S. taxpayer might reasonably ask why the antitrust agencies elected to dedicate scarce investigation and enforcement resources to a well-functioning market in the first place.

#### In practice, firms work together.

Haber ’17 [Stephen and Alexander Galetovic; March 2; Political Science Professor at Stanford University; Economics Professor at Universidad de los Andes in Santiago; Journal of Competition Law & Economics, “The Fallacies of Patent-Holdup Theory,” Vol. 13, No. 1]

D. A Fundamental Flaw Produced Incomplete Theories

The logical inconsistencies in both variants of patent-holdup theory are rooted in a fundamental flaw in the underlying game theory. As Epstein, Kieff, and Spulber have noted, patent-holdup theory arbitrarily assumes that technology developers and manufacturers negotiate royalty rates only after the technology developers have invested in R&D and the manufacturers have made sunk, standard-specific investments. Until they negotiate royalties, technology developers and manufacturers are in the dark about one another; they decide behind a veil of ignorance.68

This view of the process of innovation in SEP-intensive IT products bears little relationship to reality. In practice, technology developers, manufacturers, and other industry participants work together in a protracted, collective manner to develop new technologies that support new products that consumers will highly value. They set standards so that all products are compatible across brands and with older versions of those products. The settings in which these collaborations take place are perhaps best understood as technology development organizations, rather than standards development organizations.

#### The market solves patent holdups.

Ginsburg ’15 [Douglas H. Ginsburg, Koren W. Wong-Ervin, & Joshua D. Wright; October; Retired Chief Judge of the DC Court of Appeals, Law Professor at George Mason University; former Counsel for Intellectual Property and International Antitrust at the U.S. Federal Trade Commission; Former Commissioner of the Federal Trade Commissioner, Law Professor at George Mason University; CPI Antitrust Chronicle, “The Troubling Use of Antitrust to Regulate FRAND Licensing,” ssrn.com/abstract=2674759]

In addition, several market mechanisms are available to transactors to mitigate the incidence and likelihood of patent holdup. For example, reputational and business costs may deter repeat players from engaging in holdup and “patent holders that have broad cross-licensing agreements with the SEP-owner may be protected from hold-up.”10 Also, patent holders often enjoy a first-mover advantage if their technology is adopted as the standard. “As a result, patent holders who manufacture products using the standardized technology ‘may find it more profitable to offer attractive licensing terms in order to promote the adoption of the product using the standard, increasing demand for its product rather than extracting high royalties’” per unit.11 This is not surprising. The original economic literature upon which the patent holdup theories are based was focused upon the various ways that market actors use reputation, contracts, and other institutions to mitigate the inefficiencies associated with opportunism in transactions involving tangible property.12

Recognizing the theoretical nature of holdup concerns, the United States Court of Appeals for the Federal Circuit has held that a claim of holdup must be substantiated with “actual evidence,” and that the burden is on the accused infringer to show the patent holder used injunctive relief to gain undue leverage and demand supra-FRAND royalties.13

## 2nc---Advantage 2

### at: war

#### No climate wars

Erik **Gartzke 11**, Associate Professor of Political Science at UC-San Diego, March 16, 2011, “Could Climate Change Precipitate Peace?,” online: <http://dss.ucsd.edu/~egartzke/papers/climate_for_conflict_03052011.pdf>

An evolving consensus that the earth is becoming warmer has led to increased interest in the social consequences of climate change. Along with rising sea levels, varying patterns of precipitation, vegetation, and possible resource scarcity, perhaps the most incendiary claims have to do with conflict and political violence. A second consensus has begun to emerge among policy makers and opinion leaders that global warming may well result in increased civil and even interstate warfare, as groups and nations compete for water, soil, or oil. Authoritative bodies, leading government officials, and even the Nobel Peace prize committee have highlighted the prospect that climate change will give rise to more heated confrontations as communities compete in a warmer world.Where the basic science of climate change preceded policy, this second consensus among politicians and pundits about climate and conflict formed in the absence of substantial scientific evidence. While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions (c.f., Homer-Dixon 1991, 1994; Burke et al. 2009). these claims have been severely criticized by other studies (Nordas&Gleditsch 2007; Buhaug et al. 2010: Buhaug 2010).1 In contrast, long-term macro statistical studies find that conflict increases in periods of climatic chill (Zhang et al. 2006, 2007; Tol& Wagner 2010).2 Research on the more recent past reveals that interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt (Goldstein 2002; Levy et al. 2001; Luard 1986, 1988; Hensel 2002; Sarkees, et al. 2003; Mueller 2009).3 While talk of a ''climatic peace” is premature, broader claims that global warming causes conflict must be evaluated in light of countervailing evidence and a contrasting set of causal theoretical claims.4

### No !

#### No impact, adaptation solves, and alt causes

**Shani 15** (Amir Shani – PhD @ the University of Central Florida, researches ecotourism and ethics at the University of the Negev, Eilat Campus. Boaz Arad – spokesman in the Public Policy Center at the Jerusalem Institute for Market Studies, “There is always time for rational skepticism: Reply to Hall et al,” April 2015, ScienceDirect)

The uncertainty that encompasses current climate change assessments is strengthened in light of the studies indicating that over earth's history there have been **distinct warm periods** with temperatures **exceeding the current ones** (Esper et al., 2012, McIntyre and McKittrick, 2003 and Soon and Baliunas, 2003). Reviewing the relevant scientific literature, Khandekar, Murty, and Chittibabu (2005) concluded that “in the context of the earth's climate through the last 500 million years, the recent (1975–2000) increase in the earth's mean temperature does not appear to be **unusual** or **unprecedented** as claimed by IPCC and many supporters of the global warming hypothesis” (p. 1568). Other studies challenged the mainstream climate change narrative, according to which CO2 levels in the earth's atmosphere play a prominent role in rising temperatures. One notable example is the research by Shaviv and Veizer (2003), which demonstrates that the earth's temperature correlates well with variations in cosmic ray flux, rather than changes in atmospheric CO2. These findings and others stir contentious debates within the climate scientific community, but are nevertheless largely overlooked by the IPCC, which ignores alternative explanations for climate change. Regrettably, Hall et al. scornfully dismiss this evidence, presented in our research note, based on cherry-picking of a few “non-peer-reviewed” references that were cited, some vague claims about “misreading” and “selective citing,” as well as other semantic nitpicking. 4. Impacts of climate change The IPCC warns that climate change is likely to have severe consequences, particularly for poor countries, such as increased hunger, water shortages, vulnerability to extreme weather events and debilitating diseases. **However**, these estimations have been **heavily criticized** for failing to properly account for **substantial improvements in adaptive capacity** (i.e., the capability of coping with the impact of global warming) that are likely to occur due to advances in **economic development**, **technological change** and **human capital** over the next century (Goklany, 2007). Fostering economic growth and technological development, largely achievable through the use of fossil fuels, will strengthen both industrialized and developing countries' **adaptive capacity** to deal not just with possible future climate change consequences, but also with other environmental and public health problems. Such policy will **provide greater benefits** at lower costs than drastic climate change mitigation efforts involving substantially cutting greenhouse gas emissions (Goklany, 2004 and Goklany, 2012). Furthermore, the analyses of Galiana and Green (2009) exemplify that in the current state of energy technologies, the suggested plans for ambitious emission reductions will likely severely clobber the global economy, especially in view of present economic conditions. In order to stabilize atmospheric CO2 at accepted levels, there is a need for enormous advances in efficient energy technology, which is currently missing (Pielke, Wigley & Green, 2008). In any case, **even if** every industrialized nation meets the most ambitious emissions targets set by the Kyoto Protocol, such efforts are likely to have **little effect**, particularly in the light of the considerable increases in greenhouse gas emissions by rising economic superpowers as **China** and **India**, as well as the **remaining developing world** (Wigley, 1998). Hall et al. criticized us for choosing “selective citations…that discuss natural processes potentially affect climate in specific locations and times.” Yet the purpose of referring to such studies was to refute the claims made by the IPCC and other climate change alarmists to the effect that recent extreme weather events (e.g., floods, droughts and storms) are the consequences of anthropogenic emissions of greenhouse gases. Moreover, data shows that despite claims that the number and intensity of extreme weather has increased, between 1900 and 2010 the average annual death and death rates from extreme weather events has declined by 93% and 98%, respectively (Goklany, 2009). This is mostly due to economic and technological factors, such as improved global food production, increase globalized food trade and better disaster preparedness. IPCC's exaggerated estimations of climate change impacts were also noted in an op-ed in Financial Times written by climate economist Richard Tol (2014), a week following his demand that his name as one of the leading authors be removed from the IPCC's AR5 due to its over alarmist assessments of the impacts of AGW and underestimation of humanity's adaptive capacity. As concluded by Tol, “Humans are a **tough** and **adaptable** species. People live on the equator and in the Arctic, in the desert and in the rainforest. **We survived ice ages** with **primitive technologies**. The idea that climate change poses an existential threat to humankind is **laughable**” (2014, para 1).

## 1nr---ptx

#### impact

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.

### Uq

#### Infrastructure will pass. Dems rally.

Greve ’9-7 [Joan E; 2021; citing congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition; the Guardian, “Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill,” https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill]

Despite the war of words between moderates and progressives, the White House has continued to express confidence that Congress will ultimately reach an agreement on the legislation.

“The president and his whole team are proud of and fighting for the substance of his Build Back Better agenda,” a White House official said in a statement. “These are complex processes, but as recent weeks have demonstrated, leaders in Congress and the President know how to move them forward.”

And DelBene similarly said that her group, which represents 95 Democrats in the House, remains committee to advancing both the bipartisan infrastructure bill and the spending package.

“The strength of the legislation, both on the infrastructure side and the reconciliation bill, is what people are going to look at moving forward,” DelBene said. “I think we want to see the infrastructure deal and the reconciliation bill get done.”

### Thumper

#### XO is modest, like throwing pebbles at a castle.

Silverman ’21 [Jacob Silverman; July 9; Staff writer at The New Republic and the author of *Terms of Service: Social Media and the Price of Constant Connection*; 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 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 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, as ongoing disputes between Republicans 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.)

#### No thumpers---must pass before spending authorization runs out

Jacob Pramuk and Thomas Franck 8/25 [reporters, 8-25-2021, accessed on 9-8-2021, “Here’s what happens next as Democrats try to pass Biden’s multitrillion-dollar economic plans”, CNBC, https://www.cnbc.com/2021/08/25/what-happens-next-with-biden-infrastructure-budget-bills-in-congress.html] AF

Given the magnitude of the legislation, passing it quickly could prove difficult. To appease congressional progressives who have prioritized passage of the budget bill, Democrats could move to pass both proposals at about the same time.

While Pelosi gave a Sept. 27 target date to approve the infrastructure plan, the commitment is not binding. Still, she noted Wednesday that Congress needs to pass the bill before surface transportation spending authorization expires

Sept. 30.

“We have long had an eye to having the infrastructure bill on the President’s desk by the October 1, the effective date of the legislation,” she wrote in a separate letter to Democrats on Wednesday.

#### Antitrust takes a backseat compared to the economic package.

Underlined portion read

Kang ’21 [Jim Tankersley and Cecilia; July 24; reporters; the New York Times, “Biden’s Antitrust Team Signals a Big Swing at Corporate Titans,” https://www.nytimes.com/2021/07/24/business/biden-antitrust-amazon-google.html]

The administration has quietly supported legislation working its way through the House, but it has not yet sought to lead a congressional antitrust push in the way Mr. Biden has on infrastructure, child care and other components of his $4 trillion economic agenda.

#### Afghanistan and COVID make passage more likely---BUT---it depends on Biden’s leadership.

Lucey ’9-6 [Catherine and Ken Thomas; 2021; reporters at the Wall Street Journal, citing White House chief of staff Ron Klain and Jennifer Palmieri, a former White House communications director under President Barack Obama; the Wall Street Journal, “Biden Seeks to Shift Focus to Domestic Issues After Afghanistan Exit,” https://www.wsj.com/articles/biden-seeks-to-shift-focus-to-domestic-issues-after-afghanistan-exit-11630931401?mod=searchresults\_pos7&page=1]

Mr. Biden has sought to place the spotlight on domestic issues, including Friday’s underwhelming jobs report and recovery from Hurricane Ida, visiting New Orleans Friday and making plans to travel to the New York metropolitan area on Tuesday to assess storm damage. He is expected to focus heavily on his infrastructure and antipoverty legislation in the coming weeks, as Congress returns to Washington, as well as travel to California to campaign for Gov. Gavin Newsom, a Democrat facing a recall election.

The packed calendar comes as Mr. Biden takes bipartisan heat for the chaotic exit from Afghanistan. A few Republicans have said the president should be impeached, and Mr. Biden’s poll numbers have taken a hit. Mr. Biden defended his approach in remarks to the nation and said he would bring remaining Americans in Afghanistan home.

The president said from the White House Friday that two tasks ahead in September are combating the Delta variant of Covid-19 and working with Congress to pass his agenda, saying the country is “not where we need to be in our economic recovery.”

The administration will continue to face scrutiny of his handling of Afghanistan—possibly including congressional hearings or investigations.

“President Biden desperately wants to talk about anything but Afghanistan, but Americans who are hiding from the Taliban, ISIS, and the Haqqani network don’t give a damn about news cycles, long weekends, and polling—they want out,” Sen. Ben Sasse (R., Neb.) said in a statement.

Polls show Mr. Biden’s standing has eroded as he has grappled with issues that are difficult to control: the Afghanistan withdrawal and the pandemic. An ABC News/Washington Post poll released Friday showed Mr. Biden’s approval rating had fallen to 44%, with 51% disapproving of his job performance, a shift from late June when 50% approved and 42% disapproved.

To move forward with his agenda, the president will need to navigate tripwires in a narrowly divided Congress.

Sen. Joe Manchin (D., W.Va.), an influential moderate vote, has injected fresh uncertainty into the future of the Democrats’ $3.5 trillion spending plan with calls for a timeout on the effort.

“Instead of rushing to spend trillions on new government programs and additional stimulus funding, Congress should hit a strategic pause,” Mr. Manchin said in an opinion article in The Wall Street Journal.

White House chief of staff Ron Klain expressed optimism for the bill on CNN Sunday, saying, “If I had a nickel for every time someone’s told me this package has been dead, I would be a very, very rich person. It was dead back in May, when there was initial opposition to it. It was dead in June, the day the president went to Europe. It was dead in July again. All I have heard is how this package is going to be dead. And yet, amazingly, it continues to advance.”

Mr. Biden and Democrats are trying to pass the $3.5 trillion package of child care, education, climate provisions and tax hikes on a party-line vote, following a bipartisan agreement on a $1 trillion infrastructure bill. White House officials said they spent much of August on behind-the scenes preparation and work has begun in some congressional committees, with lawmakers returning to session later in September. Progressives and moderates in the party have clashed over timing of the bills and further conflict is likely over the policy, the size of the $3.5 trillion package and the tax components.

The White House will also contend with looming deadlines to raise the federal borrowing limit, called the debt limit, and the expiration of the government’s current funding by the end of September.

The White House and congressional Democrats believe that the infrastructure and the broader legislative package are widely popular

and see passage of those proposals as key to solidifying support ahead of the midterm elections. Democrats hold a narrow majority in the House and control the evenly divided Senate, but are at risk of losing power in next year’s elections.

“Going forward, what is going to matter for his approval rating is Covid and the economy, and that’s where his focus should be. If anything, Afghanistan makes it more likely Democrats will be aligned in wanting to pass these bills [infrastructure and reconciliation] because they know their collective survival in midterms depends on it,” said Jennifer Palmieri, a former White House communications director under President Barack Obama.

### No pc

#### Political capital is finite and decisive. It passes 5 bills a year.

Cohen ’19 [Jeffrey E; June; Political Science Professor at Fordham University; the President on Capitol Hill: A Theory of Institutional Influence, “Conclusions: Presidential Influence in Congress,” Ch. 11, p. 241-243]

The present study rehabilitates the idea of presidential influence in Congress. Instead of viewing influence as derived from personal characteristics, this study conceptualizes presidential influence in institutional terms. The major finding here is that presidents have a measurable amount of influence. Although presidents do not possess enough influence to dominate Congress, to force the legislature to accede to their every demand, they do possess enough influence to win on a significant number of roll calls that the president's side would otherwise lose. By winning on more roll calls because of this influence, presidents can affect the public policies produced through the legislative process.

This study conducted several types of analyses to estimate the amount of presidential influence. Since it can be hard to isolate causal effects with observational data, this research paired regression with quasi-experimental treatment effects analyses. The treatment effects analysis for the years 1953 to 2012 suggests that when the president takes a roll call position, the president’s side will win an additional 9% of House floor votes, or about five out of the fifty-four roll call positions that presidents take, on average, annually. Although five additional victories may not sound like much, if it leads to five major policy enactments, it may be consequential for the lives of citizens.2

Moreover, five additional pieces of legislation add up over the years—in a four-year term, there might be twenty additional enactments.

From another perspective, Ansolabehere, Palmer, and Schneer (2016, 2018) estimate that there are eight or nine major legislative enactments per Congress from 1789 to 2010 and about seventeen from 1953 to 2010. The estimated five additional pieces of legislation presidents receive from position taking is nearly 30% of major enactments in the late modern period, assuming all the additional presidential wins are on major legislation. Through position taking, presidents can have consequential impacts on the nation's policies.

As conceptualized here, presidential influence is rooted in the office and in the surrounding political environment, termed "institutional presidential influence." There is some similarity between this conceptualization of influence and studies that emphasize the importance of contextual and political factors for presidential success (Bond and Fleisher 1990; Edwards 1990). But presidents still must decide whether to apply those institutional and contextual levers of influence; they need to be strategic decision makers, too. Hence, presidential influence is not merely a matter of dumb luck (Rockman 1981). Some presidents may be luckier than others, in that the office and the political environment provide them with greater resources, such as party control, upon which they can draw. But presidents still decide whether, when, how, and with whom they will exert effort, and how much, when trying to influence Congress.

### Link turn

#### No antitrust now because it requires PC.

Folio ’21 [Joseph Charles Folio III, Lisa M. Phelan, Jeff Jaeckel, and Alexander Paul Okuliar; March 22; International law firm representing investment funds and startup companies; Morrison & Foerster, “Antitrust Update: Up and Down the Avenue,” <https://www.mofo.com/resources/insights/210322-atr-update.html> KS]

The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

#### Unites industry against Biden.

Kang ’21 [Cecilia Kang; January 26; reporter; the New York Times, “Democratic Congress Prepares to Take on Big Tech,” https://www.nytimes.com/2021/01/26/technology/congress-antitrust-tech.html]

Her bill, as well as other laws proposed to limit the power of the tech companies, will face steep opposition. In 2020, tech companies again spent more than other industries in Washington. Facebook, with lawsuits from federal and state enforcement officials, spent almost $20 million on lobbying, up 18 percent from the previous year. Amazon spent about $18 million in lobbying, up about 11 percent from the prior year.

Internet start-ups are also wary of regulations that could stymie their exit strategies to merge with larger companies as well as changes to rules that could hold them liable for the content they host. And agriculture, pharmaceutical and other industries will also probably balk at changes in antitrust laws.

#### Plan is controversial.

Chitkara ’20 -- Hirsh Chitkara, research associate at Business Insider. [“Lawmakers' Partisan Divide Will Likely Limit Antitrust Efforts to Break Up Big Tech,” *Business Insider,* 7-30-2020, <https://www.businessinsider.com/why-congress-wont-break-up-big-tech-2020-7>] KS

Republican and Democrat lawmakers had divergent agendas for the hearing, and that partisan divide will likely limit the severity of any impending Big Tech regulation. Republican lawmakers focused on allegations of censorship and bias exhibited by Big Tech platforms. Republican Rep. Jim Jordan of Ohio stated: "I'll just cut to the chase — Big Tech is out to get conservatives. That's not a suspicion, that's not a hunch, that's a fact." Jordan referenced incidents that he claimed exhibited anticonservative bias, such as Google demonetizing conservative news outlet Breitbart, and Amazon-owned Twitch banning the account of President Donald Trump. Democratic lawmakers, by contrast, tended to focus on Big Tech companies potentially abusing their size and market positioning to hurt competitors. Democrat Rep. David Cicilline of Rhode Island, chair of the House antitrust subcommittee, told Alphabet CEO Sundar Pichai: "[Google] used its surveillance over web traffic to identify competitive threats and crush them ... any business that wants to be found on the web must pay Google a tax." The lack of overlap in the partisan interests of US lawmakers suggests they will struggle to mount a united front, thus limiting any attempts at effective regulation. These efforts may also be thwarted by Big Tech lobbying efforts, as Facebook, Google, Apple, and Alphabet collectively employed over 300 US lobbyists in 2019, according to Opensecrets.org.

### Impact d

#### Extinction.

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

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

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

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

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

#### Causes societal collapse.

Monarch ’20 [Benjamin; April 20; University of Kentucky College of Law, J.D. May 2015, LLM in Energy, Natural Resources, and Environmental Law and Policy from the University of Denver Sturm College of Law, Deputy District Attorney at Colorado Judicial Branch, and Term Member at the Council on Foreign Relations; Journal of Energy & Natural Resources Law; “Black Start: The Risk of Grid Failure from a Cyber Attack and the Policies Needed to Prepare for It,” vol. 38, no. 2]

In the industrial world, when a switch is flipped, we take for granted that it will produce light, boot a computer, illuminate a stadium or activate a power plant. We know, of course, that power losses can and do occur. Many of us have lit candles during a thunderstorm or brought out extra blankets when a blizzard takes down transmission lines. As of this writing, the most populated state in the United States, California, is experiencing rolling blackouts.1 Yet even in prolonged power outages, we expect that electricity will be restored and, consequently, life will return to normal. Perhaps we need ask, however, what if power cannot be restored in a timely manner? Concern is growing that in the not-too-distant future our electricity supply could be irreparably compromised by a cyber attack. The issue when considering a systemic grid failure of this nature is twofold: how did we reach a point where something so critical to routine life now presents an existential threat, and what can we do to mitigate the risk of a catastrophic grid attack?

This article posits that the emergence of cyber attacks on industrial control systems, as a means of war or criminal menace, have reached a level of sophistication capable of crippling those systems. This article argues that a new grid security policy paradigm is required to thwart catastrophic grid failure – a paradigm that recognises the inextricable link between commercial power generation and national security. In section 5, seven policy recommendations are outlined that may, in part, mitigate a future where grid attacks pose existential risk to nations and their citizenry. Those recommendations are: first, develop a comprehensive insurance programme to minimise the financial risk of grid disruption; second, train more cybersecurity professionals with particular expertise in industrial control systems; third, institute a federally mandated information-sharing programme that is centralised under United States Cyber Command; fourth, subsidise and/or incentivise cybersecurity protections for small to mid-size utilities; fifth, provide university grants for grid security research; sixth, integrate new technologies with an eye towards securing the grid; and, lastly, formulate clear rules of engagement for a military response to grid disruption.

The purpose of this article is to provide the reader with an introduction to this complex topic. It is the aim of the author to give orientation to this issue and its many branches in the hope that better understanding will animate further curiosity and, ultimately, positive action on the part of the reader. Although many skilled and earnest people work tirelessly to prevent a grid failure scenario, it is essential that more be added to their ranks each day. Advisors, engineers, regulators, private counsel to power generators, and many others who play roles in electric power production are crucial to this subject. So, while this article provides entrée to the topic of grid security, its long-term objective is to spur action by the entire energy-related community. In the end, no one is immune to consequences of grid failure and, therefore, everyone is responsible, in part, for promoting grid integrity.2 In this regard, lawyers who represent various actors in the energy sector are going to be faced with questions and potential legal risks of a magnitude that they have never experienced before.

1.2. Turning the power back on in a powerless world

‘Black start’, not to be confused with the term ‘blackout’, is the name given to the process of restoring an electric grid to operation without relying on the external electric power transmission network to recover from a total or partial shutdown.3 At first glance, this description is unremarkable, but it implies a disturbing catch-22 – how might one restore power if the entire external transmission network is compromised?

If an electric disruption occurs at a household level, some homes may be equipped with a modest gasoline generator to temporarily restore power. If a hospital loses power, it will almost invariably be resupplied by automatic, industrial-scale generators. These micro considerations hardly give anyone pause; they are hiccups on a stormy night or a snowy day. In other words, their ‘black start’ is a quick and effective process for restoring power. But what happens, at a macro level, when an electric grid supplying power to large portions of the United States goes black, or worse, what happens if all of the United States’ electric grids go down simultaneously?4 In that scenario, how might enough non-grid power be harnessed and transmitted to turn the United States’ lights back on? Moreover, how might such a catastrophe occur in the first place? Perhaps the more ominous question is not how, but whether or not we can survive such circumstances if they persist in the long term.

The United States electric grid (‘the grid’) is the ‘largest interconnected machine’ in the world.5 It consists of more than 7000 power plants, 55,000 substations, 160,000 miles of high-voltage transmission lines and millions of low-voltage distribution lines.6 The scale and complexity of the grid in the context of the modern digital world are beyond comprehension because within it are innumerable industrial control systems; incalculable connections to digital networks; millions, if not billions, of analogue or digital sensors; many thousands of human actors; and trillions of lines of programming code.7 Further complexifying the grid is that it is comprised of generations of technologies, stitched together in ways that are not inherently secure in a world of cyber threats.8 The vastness of the grid makes security of it challenging. Likewise, the vastness of the grid makes the opportunities for intrusion seemingly infinite.

By any measure, grid failure will unleash a parade of horrors. Stores would close, food scarcity would follow, communication would cease, garbage would pile up, planes would be grounded, clean water would become a luxury, service stations would yield no fuel, hospitals would eventually go dark, financial transactions would stop, and this is only the tip of the iceberg – in a prolonged grid failure social chaos would reign, once-eradicated diseases would re-emerge and, increasingly, hope of returning to a normal life would fade.9 The notion of complete grid failure, once relegated to science fiction comics or James Bond movies, is now not only possible but also one of the most pressing national security threats today.10

#### Blackouts cascade globally AND it’s irreversible---extinction.

Rees ’18 [Martin; October 16; Astronomer Royal, Founded the Centre for the Study of Existential Risk, Fellow of Trinity College and Emeritus Professor of Cosmology and Astrophysics at the University of Cambridge; On the Future: Prospects for Humanity, “Humanity’s Future on Earth,” Ch. 2, p. 61-119]

2.5. TRULY EXISTENTIAL RISKS?

Our world increasingly depends on elaborate networks: electricity power grids, air traffic control, international finance, globally dispersed manufacturing, and so forth. Unless these networks are highly resilient, their benefits could be outweighed by catastrophic (albeit rare) breakdowns

— realworld analogues of what happened in the 2008 global financial crisis. Cities would be ~~paralysed~~ [gridlocked] without electricity— the lights would go out, but that would be far from the most serious consequence. Within a few days our cities would be uninhabitable and anarchic. Air travel can spread a pandemic worldwide within days, wreaking havoc on the disorganised megacities of the developing world. And social media can spread panic and rumour, and economic contagion, literally at the speed of light.

When we realise the power of biotech, robotics, cybertechnology, and AI— and, still more, their potential in the coming decades— we can’t avoid anxieties about how this empowerment could be misused. The historical record reveals episodes when ‘civilisations’ have crumbled and even been extinguished. Our world is so interconnected it’s unlikely a catastrophe could hit any region without its consequences cascading globally. For the first time, we need to contemplate a collapse— societal or ecological— that would be a truly global setback to civilisation. The setback could be temporary. On the other hand, it could be so devastating (and could have entailed so much environmental or genetic degradation) that the survivors could never regenerate a civilisation at the present level.