# 1AC – NDT Doubles

## 1AC – Plan

The United States federal government should prohibit anticompetitive business practices by private sector cross-border cartels by increasing the scope of its core antitrust laws to the degree allowable under international law.

## 1AC – Indigenous Regimes

#### Advantage One is Indigenous Regimes:

#### *Empagran* adheres to the presumption against extraterritoriality – that’s problematic given that cartels transcend territorial borders.

Michaels ’10 [Ralf; October 10; Arthur Larson Professor of Law, Duke University School of Law; “Empagran’s Empire: International Law and Statutory Interpretation in the U.S. Supreme Court of the Twenty-First Century,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1609705>; KS]

How did we get from a “highly interdependent commercial world” to “independent foreign harm” and “a foreign nation’s ability independently to regulate its own commercial affairs”? By way of an assumption so crucial that Justice Breyer numerous times. Here is the most elaborate formulation of the fiction: “We reemphasize that we base our decision upon the following: the price-fixing conduct significantly and adversely affects both customers outside the United States and customers within the United States, but the adverse foreign effect is independent of any adverse domestic effect.”41 This assumption is a fiction. In a “highly interdependent commercial world,” effects on one nation’s markets are never independent from effects on another nation’s markets.42 The vitamins cartel, in order to avoid arbitrage, had to keep prices roughly the same in all geographically close markets. Justice Breyer knows this, but he faces a challenge: the globalization he invokes comes back to haunt him. The doctrines which the Court has at its disposal were made for a nineteenth-century world defined by territorial states. These doctrines do not fit globalization and the transcendence of territorial borders. Perhaps new doctrines are needed; perhaps the old doctrine must be deteritorialized.43 The Court, however, finds another way. Instead of deterritorializing existing rules, it reterritorializes the phenomena to which these rules are applied. Rather than adapt the doctrines to globalization, it adapts globalization to the doctrines. If the nineteenth-century rules do not fit the twenty-first-century world, too bad for the latter – the Court turns it, by fiction, into a nineteenth-century world.

This result, of course, does not require all the globalization talk, as Justice Scalia’s concurrence makes clear

I concur in the judgment of the Court because the language of the statute is readily susceptible of the interpretation the Court provides and because only that interpretation is consistent with the principle that statutes should be read in accord with the customary deference to the application of foreign countries' laws within their own territories.44

This concurrence links the decision to another venerated canon of international law, the presumption against extraterritorial application of statutes, as formulated by Justice Story in The Apollon.45 That presumption, however, has become problematic, because territoriality has changed both its social and legal meaning. In 1825, jurisdiction was thought to be largely confined to national territory. Consequently, the presumption against extraterritoriality was almost equivalent to a presumption against violations of international law. Roger Alford neatly explains how this idea withered away in U.S. law in the twentieth century.46 Today, international law no longer poses such extensive restrictions on domestic jurisdiction over foreign conduct. The presumption against extraterritoriality has survived this shift, but it has lost its grounding in international law.47

Moreover, this decline of territoriality as a limit in international law has gone hand-in- hand with the declining importance of territoriality in society. Modern transportation has made crossing boundaries much easier; new modes of communication make territorial boundaries meaningless for many important endeavors; globalized markets pay little respect to national boundaries. The conduct of important actors, which is the object of most statutory regulation, is trans-territorial. A canon of interpretation that insists on territoriality stands in odd contrast to these developments.

Prior to the shift, Congress was presumed not to legislate beyond territorial boundaries because that would be unusual and would violate international law. Now that the canon has lost its legal foundation in international law and its teleological foundation in a presumed predominantly local character of regulated behavior, it is unclear what justifies it. One suggestion is that courts should avoid extraterritorial application to avoid subjecting the United States to foreign criticism without participation by the political branches,48 but this does not explain why limits of scope should be those of territorial boundaries. Another justification is “the commonsense notion that Congress generally legislates with domestic concerns in mind.”49 This justification is weak where, as in Empagran, the statute at hand is one aimed at determining the scope of extraterritorial application (though the justification has been used in such contexts, too.)50 More importantly, the justification begs the very question of what exactly are “domestic concerns.”51 In choice of law, such insights have led in the twentieth century to the development of interest analysis, whereby courts determine the scope of application on the basis of governmental interest and then resolve resulting conflicts with the regulatory interests of other states. If the presumption against extraterritoriality was once a presumption against the violation of choice-of-law rules, as has been argued,52 one might expect it to change along with the choice-of-law rules, as many authors have suggested it should. Empagran suggests the powerful grip that ideas of territoriality still hold even over a Justice who claims to be above it.

Territorial limits to jurisdiction present normative problems when applied to phenomena that do not respect territorial boundaries. If the effects of certain conduct transcend boundaries, while congressional statutes are presumed to remain within territorial boundaries, then the effects outside the borders remain unregulated. This has led some to conclude that the presumption against extraterritoriality, revived under the Rehnquist Court,54 is merely a fig leaf for judicial dislike of congressional regulation. Justice Holmes’ decision in American Banan has been explained by his aversion to the Sherman Act.”56 Justice Breyer, after deciding Empagran, has been praised as “the go-to guy for American business in regulatory and economic cases.”57

Such crude realist speculations on the Justices’ real intentions must remain somewhat speculative even for individual decisions; for the law at large, they have limited explanatory value. In Empagran, especially, the suggestion that the real goal is underregulation may not fully hold. The Court emphasizes that other countries have antitrust laws, too. Presumably, therefore, regulation of the cartel would not stop at U.S. borders. Instead, other nations would regulate, even if they did so by different means. This suggests that today the presumption against extraterritoriality is not merely a policy decision in favor of multinational corporations. The Court refused to concentrate all claims concerning the global cartel in one nation’s courts,58 but it does not reject the idea that all these claims should be heard somewhere. Instead, the presumption against extraterritoriality establishes a checkerboard map of regulatory authorities, in which each country is responsible for regulating its own territory. This checkerboard map resembles that of the nineteenth century, but the resemblance is superficial. Then, it represented the reality of most social relations and of international law. Today, territorial borders are an arbitrary and formalist device in a globalized world, but one that helps to avoid overlapping regulatory claims precisely because of its formal character. The nineteenth-century checkerboard view of the world survives in the twenty-first century, but it changes its character: it has become a formal-technical device for the allocation of regulatory authority.

IV. A Hegemonialist Reading:

The Absence of the Developing World.

A problem remains. The idea of decentralized regulation – each regulates its own markets, so all the world is regulated – can succeed only if regulatory authority exists everywhere on the checkerboard. This is a problem in antitrust law. Although the United States is no longer the only country with effective antitrust enforcement, many countries still lack the capacity or political will (or both) to crack down on cartels. None of these considerations, however, can be found in the Empagran decision. The most striking passage in the opinion is one in which Justice Breyer suggests such a checkerboard world of regulation: “Why should American law supplant, for example, Canada's or Great Britain's or Japan's own determination about how best to protect Canadian or British or Japanese customers from anticompetitive conduct...?”60

This is a strange way of putting the problem. In Empagran, the named plaintiffs were not “Canadian, or British or Japanese customers”– they came from Ukraine, Ecuador, and Panama. Yet throughout the opinion, Justice Breyer never addresses the sovereign interests of those countries. When he states that application of U.S. law “would undermine foreign nations' own antitrust enforcement policies,”61 he is not speaking of Ecuador (which may be quite happy if the United States cracks down on cartels impacting that country).62 Instead, he speaks of Germany and Canada. When he fears that “to apply our remedies would unjustifiably permit [foreign nations’] citizens to bypass their own less generous remedial schemes, thereby upsetting a balance of competing considerations that their own domestic antitrust laws embody,”63 the balance of competing considerations he has in mind is that of Germany, Canada, and Japan, not that of Ukraine. In the end, Justice Breyer is not allowing Canada, Great Britain, or Japan to determine how best to protect their consumers as he proclaims. Instead, he is protecting Canadian, British, and Japanese corporations against their overcharged customers abroad.64 All named plaintiffs come from developing countries; all defendants and all amicus briefs come from developed countries. The court will apparently listen to the latter, and ignore the former.

In doing so, the Court adopts not only the nineteenth century idea of neatly distinguished territorial entities; it also adopts the old idea of an international law limited to European and North American countries.65 Developed countries regulate their markets, and the rest of the world remains unregulated – with the consequence that European and American defendants can retrieve the money they lose to American and European plaintiffs and regulators. Justice Breyer’s harmony among countries creates quite an exclusive club. In the name of avoiding U.S. hegemony over other developed countries, the Supreme Court endorses hegemony of developed over undeveloped countries. It avoids the imperialism of imposing U.S. law on others, but it endorses the imperialism of restricting access to U.S. law.

#### Developing countries fail at enforcement.

Michaels ’16 [Ralf; 2016; Arthur Larson Professor of Law, Duke University School of Law; “Supplanting Foreign Antitrust,” <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4808&context=lcp>; KS]

A. Challenges

Once, establishing antitrust regimes was thought not to benefit developing countries.8 That view is no longer prevalent. Today, more than half of the developing countries in the world have antitrust regimes.9

Having laws on the books represents, however, only a first step. A greater problem for many developing countries lies in building institutions10 and enforcing existing antitrust laws. Here, the data are somewhat unclear. Levenstein and Suslow found in 2004 that actual enforcement of existing antitrust law was widely lacking.11 Waked, by contrast, suggests that developing countries do allocate resources to the enforcement of antitrust laws, though the degree depends on, amongst others, general macroeconomic development, openness to trade and imports, and level of corruption.12 Buthe and Aydin identify several factors that constrain developing countries: limits in financial resources and expertise, unsupportive or hostile political-legal environments, limitations to legal culture, a lack of competition culture, and underdeveloped markets13

The enforcement problem is exacerbated for transboundary cartels with actors from outside the developing countries targeting the country's markets.14 Often, less developed countries do not even appear to recognize the impact these cartels have on their economies.15 If cartel members act outside the country, agencies have difficulties detecting and scrutinizing the cartel.16 Where they do, the global market power of firms is often badly matched by the antitrust regimes of developing countries.17 Even if developing countries have the resources and expertise to regulate small and midsize local cartels, they may well be unable to regulate bigger and transnational or multinational cartels.18 It may often be preferable for them to allocate scarce resources to the regulation of domestic cartels.

B. Disentangling Regulation And Regulator

The result of the previous section is ambivalent. On the one hand, developing countries would benefit from antitrust regimes. On the other hand, some of these countries have difficulty building and using the necessary institutions, particularly ones strong enough to take on large, multinational cartels.

The most obvious way to deal with these problems is for developing countries to build effective antitrust regimes. This is the focus of the other contributions in this issue. However, this does not resolve situations that occur while such institutions do not exist, and it does not resolve situations that are too big for developing countries to handle. Does that mean that, until and unless they find the resources to build such institutions, regulation of their markets will necessarily be deficient? This is so only if one assumes, like most do, that regulation has to happen in and by these countries themselves.

But this assumption is not necessary. It merges two questions that are analytically separable. Even if one assumes that developing countries would benefit from antitrust regimes, this assumption does not reveal who should be charged with developing and enforcing antitrust law. One might think the answer obvious: the underdeveloped country itself. This would be plausible if markets were completely national. In this case, only the affected state itself would be interested in regulation, and only that state would seem justified in making decisions.19 But markets transcend borders; global cartels are among the most forceful reminders of this. The same is true for laws; their impact is not strictly territorial and can cross borders.20 Consequently the market of one country could well be regulated by the antitrust regime of another. The question is not whether this is theoretically possible but rather under what conditions it is feasible, desirable, and legally permissible.

Can the domestic authorities of a developed country fill the gap of regulation in a developing country? The idea of enforcing someone else's antitrust regime is not as outlandish as it may seem. 21 E.U. antitrust law is to a large part enforced not by E.U. agencies but by national institutions.22 Something similar is true for the Andean Community, which provides its General Secretariat with investigative powers but relies on domestic agencies for enforcement.23 The idea that transboundary cartels should be regulated by domestic agencies is therefore not per se anomalous.

The question is whether such mechanisms can also operate between states. If the domestic agencies of a developing country cannot effectively regulate certain anti-competitive conduct, and no supranational institutions exist to fill the gap, a remaining possibility is what is here called "supplanting antitrust." Concretely, the question is whether a developed economy can use its antitrust regime for the regulation of cartels that affect developing countries. And if so, what are the circumstances under which this would be justifiable?

#### Developing countries rely on trickle-down enforcement from developed countries due to regulatory patchworks – only private enforcement offers adequate compensation and deterrence.

Martyniszyn ’21 [Marek; Senior Lecturer in Law, Queen’s University Belfast (Northern Ireland); January 14;

“Competitive Harm Crossing Borders: Regulatory Gaps And A Way Forward,”

https://academic.oup.com/jcle/article/17/3/686/6095856?login=true

The current regulatory patchwork works relatively well for the key developed countries. The established competition agencies could overcome the hurdles of transnational cases if they so choose.48 They have the necessary financial and human resources and expertise. This state of affairs may explain why the developed world stopped investing efforts in finding a multilateral solution to the problem of transnational anticompetitive conduct such as international cartels.

Even when foreign violators do not have assets in the developed states, they are unlikely to react to unfavourable enforcement outcomes by exiting the market because such markets are too important. The economic weight of a market helps to realize the potential of extraterritoriality. Economies that are less important from the violators’ perspective face a particularly uphill and unequal battle when challenging anticompetitive conduct.

In this regulatory context, the smaller and less developed countries are advised to focus their enforcement on domestic violations.49 When it comes to transnational violations, such as international cartels, they are often recommended to rely on the enforcement efforts of developed regimes.50 That is, they are to depend on what can be called ‘trickle-down enforcement’. The implicit argument is: should an international cartel be investigated and sanctioned by one or more developed agencies, it will be disbanded and cause no further competitive harm. In other words, enforcement by more developed agencies can generate positive externalities, or spill-over effects for other regimes. Hence, there is an opportunity for enforcement free-riding. While this certainly happens, this proposition assumes that transnational violations affect developed and developing countries in a similar manner. This may be true when it comes to violations affecting virtually all world markets; in such casesprosecution effectively deals with the totality of the underlying anticompetitive conduct. For example, in the case of the Southeast Asian cartel of LCD screen manufacturers, enforcement by a number of agencies led to the restoration of competition.51 Similarly, the operation of the vitamins cartel was global and attracted significant attention of enforcers in several jurisdictions.52 However, not all transnational violations are omnipresent with sufficient impact on key economies to provoke vigorous enforcement and a complete discontinuation of the harmful practice. For example, the American Soda Ash Export Cartel (ANSAC), a U.S.-based export cartel, was found in breach of EU competition law in 1990.53 However, this decision did not lead to its abandonment. ANSAC reorganized its activities in relation to the EU and continued operating in a business-as-usual manner in other markets. In 1996 it was challenged in India. The case failed due to the lack of an explicit textual basis in Indian law allowing for extraterritoriality. The judgment was rendered under severe pressure exerted by the United States. In 1999 the same cartel was challenged in South Africa, where—after nearly ten years of litigation—ANSAC settled.

Enforcement in the EU, India and South Africa did not lead to the break-up of ANSAC, which continues operating in various markets. This case underlines the gaps in the current regulatory framework. It shows that enforcement free-riding will not necessarily work. There may be no trickle down benefit to countries that forego domestic enforcement.

Moreover, reliance on enforcement activities of developed countries by other states is not always an option. While some transnational violations are truly global, many types of anticompetitive conduct are more limited in scope, depending on the nature and characteristic of the goods or services involved. There may be regional arrangements (for example, a regional cement cartel) or arrangements that affect only a specific group of countries (for example, a cartel concerning a good which is no longer sold in the developed economies, but which is still offered in developing countries). In such cases there would be no enforcement by developed agencies to piggy-back on and therefore no trickle-down benefit, given that markets in developed economies would not be affected.

Due to the existing gaps in the regulatory framework, the recommendation to focus on domestic violations has had perhaps unintended, and somewhat perverse, consequences. Domestic infringements—which typically do not lead to transfer of wealth abroad—are pursued while transnational violations escape scrutiny, despite generally causing much greater harm54 and often leading to outflow of wealth from the domestic economy. Even in cases of successful reliance on enforcement by agencies of other states (for example, in cases of truly global cartels) the transfer of wealth is not remedied. The rents extracted through supra-competitive prices are not even partially remedied by fines imposed on the violators, given that no sanctions are imposed in relation to the harm to the domestic market. Rather, the benefit is the prevention of future harm. This is only a partial success, but even this is not present in cases in which the foreign enforcement is either not robust enough to lead to discontinuation of the anticompetitive conduct in question or when such enforcement is simply missing. Hence, passive reliance on trickle-down enforcement is unsatisfactory.

Furthermore, even if free-riding on enforcement by other states can prevent future harm, this setup provides no deterrence, which is considered crucial in modern competition law. Transnational violators can feel safe and act with impunity. Any sanctions they may face will relate only to harm caused in the enforcing jurisdictions. Hence, there is no reason for them not to continue with existing—and not to create new—anticompetitive arrangements that extract wealth from markets in states that do not challenge transnational violations.55 The situation is particularly grim in the case of anticompetitive practices that do not affect any major jurisdiction enforcing competition law robustly, since there will be no agency to piggy-back on and no possibility of a trickle-down benefit. The violation may remain completely off the radar should domestic agencies focus solely on domestic conduct. Moreover, even if the viability of a particular anticompetitive arrangement requires it to be global in scope, prospective violators may still find it profitable, even after taking into account any sanctions they may face in the key jurisdictions that actively challenge such transnational violations. Profits extracted from the non-enforcing jurisdictions may offset ‘related’ costs, that is sanctions imposed in the relatively few jurisdictions which do pursue such cases. This argument was made before the US Supreme Court in Empagran.56 Such sanctions—especially if only financial in nature—can be seen as no more than just a selectively imposed tax on transnational anticompetitive activities. The availability of individual criminal sanctions in the form of imprisonment in some countries changes that dynamic, but does not fundamentally resolve the problem.

Therefore, reliance on trickle-down enforcement should not be readily accepted as a solution to the problem presented by transnational anticompetitive practices. Public enforcement of competition law typically aims to: (1) deal with the prohibited conduct in question so that it does not continue (prevention of further harm); (2) punish violators in the instant case; (3) deter other entities from engaging in any prohibited conduct (general deterrence). Trickle-down enforcement can, in some cases, help to prevent further harm, but under the current regulatory patchwork, violators are neither adequately punished nor deterred. Private enforcement is aimed at: (1) compensating the victims and (2) strengthening deterrence. Trickle-down enforcement does not contribute to these two goals. Moreover, transnational violations lead to transfer of wealth and, without any domestic enforcement, this phenomenon is not remedied in any manner. Therefore, trickle-down enforcement provides limited positive externality.

#### Supplanting antitrust in developing countries solves.

Michaels ’16 [Ralf; 2016; Arthur Larson Professor of Law, Duke University School of Law; “Supplanting Foreign Antitrust,” <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4808&context=lcp>; KS]

While actual supplanting antitrust as such appears like a novel idea,24 the use of developed country antitrust expertise and actors for developing countries is not unusual. Developed countries offer their regimes as models, and many antitrust regimes in developed countries around the world are the results of such modeling.25 They provide technical assistance in the form of expertise and manpower.26 They provide investigative assistance to concrete antitrust inquiries.27 And they provide enforcement assistance by enforcing decisions, especially court decisions, made in developing countries.

Recently, Michal Gal has made a proposal that goes further.2 8 She suggests that small and developing countries could save on antitrust enforcement costs by recognizing decisions made in developed countries with regard to the same cartel.29 In her proposal, after a decision has been made in a developed country, a local plaintiff in the developing country need not prove existence of the cartel but only the local elements of the offense, as well as some procedural requirements concerning the recognized decision.3 0

All these assistance mechanisms differ from supplanting in a crucial way: they leave implementation to the developing country. This is different from another form of assistance that is more akin to supplanting, namely positive comity.31 The OECD defines this as an instrument "whereby competition authorities can request another jurisdiction to address anti-competitive conduct that might best be fixed with an enforcement action in the country that is the recipient of that request.32 Positive comity is regulated in several international agreements.33 It is a version of supplanting in the sense that one country regulates the market of another. Here, the decision that enforcement should take place is still taken by the affected country (through a request), but an actual enforcement is left to the other country.

Supplanting antitrust builds on these ideas but goes further. The idea is that a developed country's antitrust agencies and courts assert jurisdiction over cartels that have some or even all of their effect in a less developed country, even in the absence of a treaty that allows for it, and even in the absence of a request by the developing country.

#### Competition is key to developing economic growth.

NYU ’14 [NYU School of Law; October 24; Conference Program featuring numerous speakers; *NYU School of Law, “*ANTITRUST IN EMERGING AND DEVELOPING COUNTRIES FEATURING CHINA, INDIA, MEXICO, BRAZIL, SOUTH AFRICA...” <https://www.law.nyu.edu/sites/default/files/upload_documents/conference%20summary.pdf>; KS]

ANTITRUST POLICY IN EMERGING AND DEVELOPING COUNTRIES

Dr. Santiago Levy Algazi illustrated that development and long-term growth is about productivity rather than a country’s labor force and capital investment by comparing South Korea and Latin America. In the 1970s through the 1990s, South Korea succeeded in narrowing the gap of per capita income with the United States, by increasing its level of productivity. Analyzing the same parameters in Latin America, despite high capital investments, a large labor force, and high rates of savings, per capita income in Latin America lagged behind the United States and South Korea. Dr. Levy identified low productivity as the reason behind the lack of economic growth and income disparity.

Economic models in the 1990s related productivity and GDP to the technology available to the economy and factors of production (including education, human capital, and the stock of capital goods available). Subsequent research added another factor to understanding economic growth and productivity – the environment. An enabling environment, described by Dr. Levy as the context in which economic activity takes place, plays a key role in increasing productivity. Aspects of environment include how workers and firms interact, labor regulation, social insurance, access to credit, tax policies, and competition and regulation in the markets for goods, services, and inputs. Environment is largely the factor dividing the developed countries and developing countries in terms of efficiently utilizing labor and capital. In his view, development is not about accumulating capital and educating workers. Instead, development depends on how a country constructs its competition policy and other institutions, how it regulates its workers, and how they interact in creating output.b

Dr. Levy then demonstrated how the absence of competition policy in a country often will lead to monopolies – driving employment and productivity down – and in some cases will concentrate political power in the hands of a few. The concentration of economic and political power, in turn, can generate policies that are inefficient and anticompetitive. One example he provided was credit – where there is limited collateral, credit may be allocated to inefficient projects championed by the rich, whereas other efficient projects may go unfunded. Competition policy plays a key role in preventing this concentration of economic and political power and supports efficient markets and democracy.

Competition policy was identified by Dr. Levy as an important component of a development strategy for emerging and developing countries because of its impact on the environment. Its absence can limit productivity. A vigorous competition policy, on the other hand, can make the difference between “crony capitalism” and healthy institutions and markets.

#### Development strategies improve agriculture, health, and tech markets – overcome poverty and inequality.

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

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

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

#### Competition guarantees growth in developing countries – decades of models confirm.

Cheng ’20 [Thomas; July 14; Associate professor in the Faculty of Law of the University of Hong Kong; Promarket, “Why Competition Law Is So Important for Developing Countries,” <https://promarket.org/2020/07/14/why-competition-law-is-so-important-for-developing-countries/>; KS]

The Relationship Between Competition and Growth

Competition does contribute to economic growth, and thus promoting competition law enforcement will enhance the growth prospects of developing countries. Therefore, developing countries should take competition enforcement seriously.

While many competition law scholars in the past have asserted this as an article of faith, and the literature on competition law in developing countries has taken it as a fact, it is important to establish the relationship between competition and growth on a more rigorous basis, both theoretically and empirically.

From a theoretical perspective, the various growth models that have been proposed by economists over the last six decades indicate the main drivers of growth and allow us to examine whether competition has a role to play in it. Most of these economic models posit that innovation and productivity growth are the principal sources of economic growth. Therefore, to the extent that competition promotes innovation and productivity growth, fostering competition enhances economic growth.

Innovation, however, has to be understood differently in the context of most developing countries. Most of them are incapable of producing cutting-edge innovation along the global technological frontier. Instead, most of the innovation that takes place in these countries exists in the form of adapting foreign technologies.

Adaptation, however, does not mean mere copying. Economists have suggested that even adapting foreign technology requires R&D. Such innovation in the context of developing countries could be called laggard innovation, as opposed to frontier innovation, which refers to cutting-edge innovations that mostly hail from industrialized economies.

The question then becomes whether competition promotes laggard innovation, which includes acquiring tacit knowledge for the purposes of technological adaptation, imitation, and process innovation; this author contends that it does. This conclusion is bolstered by a wealth of empirical studies, which, by and large, have found a positive correlation between competition and economic growth.1 Therefore, it is in developing countries’ interest to devote resources to competition law enforcement.

#### Developing economies are on the brink – economic collapse results in global state failure.

Brown et al. ‘20 [Frances et al.; April 6; Senior fellow and co-director of Carnegie’s Democracy, Conflict, and Governance Program, who previously worked at the White House, USAID, and in nongovernmental organizations; Carnegie Endowment for International Peace; *Carnegie Endowment,* "How Will the Coronavirus Reshape Democracy and Governance Globally?" <https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>]

BROADER GOVERNANCE IMPLICATIONS

Beyond the pandemic’s effects on democracy, a range of governance ramifications may emerge in the months ahead.

BASIC GOVERNANCE VIABILITY AND REGIME STABILITY

The pandemic will exert enormous pressures on governance institutions in heavily affected countries—especially on health systems, but also on many other essential government functions, from education and food supply chains to law enforcement and border control. Even in comparatively wealthy states, like Italy, Spain, and the United States, health systems in the worst-affected areas have already cracked under the weight of the pandemic. Crisis responses will inevitably require triage well beyond the health sector, diverting government attention and resources from other vital functions and challenges. This problem will be exacerbated as more and more politicians, government leaders, and civil servants test positive for the virus, rendering governments less able to operate just when they need to be working overtime. The specter of the pandemic has also forced legislatures and government agencies to curtail operations or work remotely, resulting in inevitable losses of efficiency.

As the virus spreads more widely in weak states, these governance challenges will be even more pronounced. The acute public health emergency will be on a collision course with an abject lack of government capacity, frail institutions, limited government reach, and low citizen trust in leaders (and corresponding reluctance to heed public health directives). Social distancing will be difficult to observe in crowded settlements, especially if residents are reliant on informal work to survive. At the same time, governments in many developing countries will struggle to mobilize adequate resources to ease the effects of an economic recession. Robust international assistance efforts will be essential, but insufficient implementation capacity may hinder their effectiveness. In countries already suffering from protracted conflict or instability, the pressures of the pandemic and resultant cascade of governance failures could lead to at least partial state collapse.

PRESSURE ON SOCIOPOLITICAL COHESION

The pandemic will strain basic sociopolitical cohesion in many states. The differential effects of the health crisis along key axes—rich vs. poor, urban vs. rural, region vs. region, and citizen vs. migrant—may sharpen existing sociopolitical divides. The pandemic may compound those strains by exacerbating political polarization where it already exists. From India and Bolivia to Poland and the United States, many democracies are already suffering from rising animosity and tensions between contending political camps. As the crisis worsens, opposing sides may disagree about the gravity of the pandemic or about appropriate government responses—a dynamic that could be intensified by people’s greater reliance on online communication while they remain mostly isolated in their homes, and by governments using the crisis to advance partisan agendas. In the United States, for example, partisanship has heavily shaped perceptions of the severity of the crisis and individuals’ trust in the government’s response. In Brazil, President Jair Bolsonaro’s dismissal of the seriousness of the crisis has inflamed an already fierce political divide.

At the same time, the “wartime” imperative to combat the pandemic could invoke feelings of shared sacrifice and collective mission that heal rather than aggravate societal and political divisions. But such a rallying effect likely requires political leaders to rise to the challenge and take a unifying approach, which goes against the populist playbook in use in many countries. Tracking leadership styles and messages will be key to understanding the longer-term effects of the pandemic on sociopolitical cohesion.

HEIGHTENED CORRUPTION

Government responses to the pandemic are likely to exacerbate graft and corruption in many countries. Crises involving urgent medical needs and scarce supplies inevitably present opportunities for smuggling, graft, price-gouging, and fraud.

Corruption undermines the effectiveness of public health responses, particularly if valuable resources are diverted from high-need areas or citizens are denied treatment if they refuse to pay bribes. Both domestic actors and international partners assisting with public health responses should anticipate these risks and avoid the tendency to adopt an “anything goes in an emergency” attitude. In the medium term, the perception and reality of heightened corruption may increase popular discontent with governments.

However, the crisis could also end up spurring new anticorruption measures. If corruption spikes rapidly when governments implement crisis measures, widespread public outrage may catalyze reforms that improve health governance and public accountability. More immediately, the prospect of high-stakes corruption may also mobilize civil society, governments, and international actors to take preventive steps, especially in places that are still less affected by the pandemic. In the United States, for example, legislators heeded calls for increased oversight in the new economic stimulus package. Civil society groups in Nigeria are urging government authorities to institute corruption safeguards as the country braces for the coronavirus. Possible additional measures may include concerted diplomatic pressure for greater oversight over aid flows or increased adoption of recommendations already developed by advocacy groups.

LOCAL-NATIONAL DISCONNECT

The virus may reshape dynamics between national and regional or local government actors. Local officials are on the front lines of the crisis response, sometimes reinforcing and sometimes competing with messages from national leaders. In Afghanistan, where the central government’s presence in the periphery is limited, some provincial governors have been shoring up its policies and bolstering its response efforts. The governor of Nangarhar Province quickly set up an emergency aid fund and publicly dispelled myths about curing the virus, while other governors have supplied basic food packages to encourage infected men to stay home from work.

Elsewhere, the virus response has exacerbated friction between local and national officials. In Hungary, where the opposition party controls several major cities, the central government unveiled a measure that would dilute mayors’ decisionmaking authority during an emergency. Local leaders quickly attacked the plan as one that would undermine the coronavirus response, and the government eventually walked it back. In Turkey, the pandemic has renewed long-standing tensions between President Recep Tayyip Erdoğan and the opposition-party mayor of Istanbul. Contrary to Erdoğan’s directives, the mayor has advocated a lockdown of Istanbul and launched his own fundraising campaign to galvanize the response, prompting national leaders to block the effort. In the United States, the pandemic response has intensified frictions between Trump and several Democratic state governors critical of his administration’s response.

These trends could change internal power relations in various places, whether by enhancing local-level leaders’ legitimacy at the expense of national officials or worsening governance fragmentation. Where friction between national governments and opposition-party local leadership tracks ideological, regional, and rural-urban lines, it may exacerbate preexisting political polarization.

ENHANCED ROLES OF NONSTATE ACTORS

The virus may also reshape relationships between nonstate actors and governments, with important implications for government legitimacy and claims to sovereignty. Where governments enjoy low levels of citizen trust, cooperating with nonstate systems of governance may be essential to ensuring an effective crisis response. In Sierra Leone, for example, local chiefs were highly influential in containing the spread of Ebola. The Taliban in Afghanistan are already committing themselves to cooperating with health officials from international organizations like the World Health Organization that typically collaborate with sovereign governments. Arab governments are mobilizing official Islamic institutions and authorities to help them manage the crisis, which may help them compensate for low levels of public trust in official communications and directives—while potentially also reinforcing government control over the religious domain.

However, nonstate actors’ enhanced role in implementing crisis responses may also strengthen their legitimacy and authority in the eyes of local communities, thereby entrenching their political influence. In Rio de Janeiro, for example, drug trafficking gangs have imposed a coronavirus curfew in the city’s favelas and handed out soap to local residents, while condemning the Brazilian government’s lack of action. In Lebanon, the paramilitary organization Hezbollah has reportedly mobilized a remarkable 25,000 people, including medics, to combat the virus, in addition to organizing new testing centers and ambulances and repurposing an entire hospital for the crisis. Although the group insists that its efforts are meant to “complement the government apparatus”—Hezbollah is part of the government coalition—the response stands in notable contrast to the struggles of the official Lebanese administration. In Afghanistan, the Taliban have launched a coronavirus awareness campaign in areas of the country under their sway; whereas the Kurdish-led region of northeast Syria, which maintains autonomy from the regime of President Bashar al-Assad, has initiated curfews, coordinated aid delivery, and stood up isolation wards to combat the virus.

As in many situations of acute crisis, rapid and effective efforts by nonstate actors to enforce order or deliver services can foster or reinforce alternative systems of governance, particularly if the government is seen as absent, ineffective, or divisive. On the other hand, different regimes may try to use the crisis to shore up their control over nonstate entities. It will be important to monitor these: in fragile or low-income states, nonstate actors’ heightened roles in crisis response—or, alternatively, their efforts to impede effective responses—will likely reshape citizens’ perceptions of state legitimacy and their expectations of the state.

TIME TO PREPARE

Looking ahead, all domestic and transnational actors concerned with democracy’s future must closely monitor the wide-ranging, fast-moving political effects of the pandemic, rapidly devise responses to lessen potential harm, and seize any positive opportunities the crisis may present. Coming soon is a second, perhaps even bigger wave of political disruption that will be caused by the unfolding global economic crisis. Potentially devastating increases in economic inequality, unemployment, debt, and poverty, as well as pressures on the stability of financial institutions, will put enormous strains on governance systems of all types. After the global financial crisis that erupted in 2008, few foresaw the very long tail of negative political consequences. Yet that crisis ultimately ushered in the rise and spread of illiberal populism, fragmentation of party systems, and consolidation of several authoritarian regimes—long after economic recovery was under way.

Amid a new crisis even more daunting in scale, there is a natural tendency for governments and individuals alike to be consumed by the urgency of near-term domestic fallout from the pandemic. But just as the virus’s contagion respects no borders, its political effects will inevitably sweep across boundaries and continue to echo long after the health emergency has eased. Now is the time to get ready.

#### It’s existential – causes disease, terror, and great power war.

Krasner 18 (Stephen D. Krasner, Fellow of the American Academy, Senior Fellow at the Freeman Spogli Institute for International Studies, Graham H. Stuart Professor of International Relations, and Senior Fellow at the Hoover Institution at Stanford University, Karl Eikenberry, Fellow of the American Academy, Oksenberg-Rohlen Fellow and Director of the U.S.-Asia Security Initiative at Stanford University’s Asia-Pacific Research Center, Conclusion, Daedalus, Conclusion, Journal of the American Academy of Arts & Sciences, Volume 147, Issue 1, Winter 2018 Pages 197-211, MIT Press Journals, doi:10.1162/DAED\_a\_00484)

Civil wars can impact the wealthiest and most powerful countries in the world. The most consequential potential impacts are transnational terrorism and pandemic diseases, global crises that could be caused by intrastate conflict. Civil wars might also lead to large-scale migration, regional instability, and potential great-power conflict. And high levels of intrastate violence and loss of government control can often give rise to massive criminality, though this is most effectively addressed through domestic law enforcement rather than international initiatives.

The nature of civil wars varies. The most important distinction is between civil strife that is caused by the material or political interests of the protagonists and civil strife that is caused by transnational ideological movements. The latter, if successful, might threaten regional stability and even the stability of the contemporary international system that is based on sovereign statehood. Transnational ideological movements, which in the contemporary world are almost all associated with particular versions of Islam, base legitimacy on the divine and reject both existing boundaries and secular authority. While transnational movements claiming divine authority are more threatening to the existing international order, it is very difficult for such movements to secure material resources. Institutions that control these resources, primarily states but also international organizations, ngos, and multinational corporations, are manifestations of the extant global order. When combatants in civil wars are motivated by material incentives and accept the principles of the existing international order, then the “standard treatment” for addressing civil strife–un peacekeeping plus some foreign assistance–is the most effective option if combatants believe that they are in a hurting stalemate, and if there is agreement among the major powers. If, however, combatants reject the existing order, then the standard treatment will not work.

Finally, based on most, but not all of the essays in these two issues of Dædalus, the opportunities for external interveners are limited. Countries afflicted by civil strife cannot become Denmark or be placed on the road to Denmark; they cannot be transformed into prosperous democratic states. The best that external actors can hope for is adequate governance in which there is security, the provision of some services especially related to health and possibly education, and some limited economic growth. This is true whether the standard treatment is applied or if one side can win decisively. More ambitious projects aimed at consolidated democracy, sustained economic growth, and the elimination of corruption are mostly doomed to fail and can be counterproductive regardless of whether the combatants are interested in seizing control of an existing state or are motivated by some alternative, divine vision of how political life might be ordered. National political elites in countries afflicted with civil strife will be operating in limited-access, rent-seeking political orders in which staying in power is their primary objective. National elites will not accept accountability, legal-rational bureaucracies, or free and fair elections, all of which would threaten their power.

The essays in these two issues of Dædalus and the literature more broadly identify six threats from civil strife that might directly impact the wealthy and more powerful polities of the world, or the nature of the postwar liberal international order. The first two–pandemic diseases and transnational terrorism–are potentially the most consequential, although neither poses the kind of existential threat presented by war among nuclear armed states.

Pandemic diseases. As the essay by Paul Wise and Michele Barry points out, since 1940, some four hundred new diseases have emerged among human populations.2 Most of these diseases have been zoonoses: disease vectors that have jumped from animal populations, in which they may be benign, to human populations, in which they might cause serious illness. Most of these outbreaks have occurred in a belt near the equator, where human beings intermingle more closely with animals, such as bats and monkeys. The main impact of civil wars is, however, not in increasing the number of new diseases, but rather diminishing the capacities of health monitoring systems that could identify, isolate, and possibly treat new diseases. Effective detection requires constant monitoring, which is extremely difficult in areas that are afflicted by civil war. Epidemics, or at least disease outbreaks, are inevitable given the ways in which human beings impinge more and more on animal habitats, but allowing an epidemic to evolve into a pandemic is optional. If effective detection and monitoring are in place, a disease outbreak will not turn into a pandemic that could kill millions. So far, the world’s population has been spared such an outbreak. If, however, a disease can be transmitted through the air, and if civil strife or something else prevents effective monitoring, the likelihood of a pandemic increases.

Transnational terrorism. Terrorism, which in recent years has primarily, but not exclusively, been associated with Islamic jihadism, can arise in many different environments. At the time of the September 11 attacks, Al Qaeda and its leader Osama bin Laden were resident in Afghanistan, a very poor, land-locked country. Before that, Bin Laden had found refuge in Sudan. Most of the participants in the September 11 attack, however, were born in the heart of the Arab world, namely in Saudi Arabia, and had resided for a number of years in Germany. The perpetrators of the July 7 attacks on the mass transit system in London were Muslims of Somali and Eritrean origin, raised and schooled in the United Kingdom. The bomber, whose efforts to bring down an airliner headed for Detroit were frustrated by a courageous and alert passenger, was a Nigerian citizen who had spent time with jihadi ideologues in the Middle East. The attacks in Paris and Nice in 2015–2016 were carried out by individuals born in North Africa, but who had lived for many years in Western Europe. The murders of fourteen peo- ple in San Bernardino, California, were perpetrated by a U.S. citizen born in Chicago, whose parents were from Pakistan and who was educated at California State University, San Bernardino, and his wife, who was born in Pakistan but spent many years in Saudi Arabia. The massacre at the Orlando, Florida, night club in 2016 was carried out by the American-born son of a man who had emigrated from Afghanistan and had lived for many years in the United States.

While terrorism associated with Islamic jihadism is hardly an exclusive product of safe havens in countries afflicted by civil strife or poor governance, the existence of such safe havens does, as Martha Crenshaw argues, exacerbate the problem.3 Safe havens are environments within which would-be terrorists can train over an extended period of time. A number of terrorists, even those raised in Western, industrialized countries, have taken advantage of such training. Transnational terrorist organizations might or might not secure weapons of mass destruction; they might or might not develop more effective training; their operatives might or might not be discovered by intelligence services in advanced industrialized democracies. Civil war and weak governance, however, increase the likelihood that transnational terrorist groups will find safe havens, and safe havens increase the likelihood of attacks that could kill large numbers of people.

Global pandemics and transnational terrorism are the two most serious threats presented by civil wars. The probability that either will significantly undermine the security of materially well-off states is uncertain, but both are distinct sources of danger. Civil wars and weak governance increase the likelihood that large numbers of people could be killed by either threat. Neither is an existential threat, but both could have grave consequences for advanced industrialized democratic states. Hundreds of thousands or millions of people could die from a pandemic outbreak resulting from an easily transmissible disease vector or from a transnational terrorist attack that could involve dirty nuclear weapons, an actual nuclear weapon (still quite hard to obtain), or artificial biologics (increasingly easy to produce).

Either a global pandemic or terrorist attack, possibly using weapons of mass destruction, would almost certainly lead to some constraints on the traditional freedoms that have been associated with liberal democratic societies.

Migration, regional instability, and greatpower conflict. Civil wars are also dangerous because they could lead to greater refugee flows, regional destabilization, and great-power conflict. Not every civil war has the potential for generating these global crises, but if generated, they would be a product not just of civil strife but also of policy choices that were made by advanced industrialized countries. In this regard, they should be contrasted with possible pandemics and transnational terrorism that, arguably, would occur regardless of the policies adopted by wealthy democratic states.

As Sarah Lischer’s essay shows, the number of migrants–especially people displaced by civil wars–has increased dramatically in recent years.4 Most of these migrants have been generated by three conflicts, those in Afghanistan, Syria, and Somalia. The wave of migrants entering Western Europe has destabilized traditional politics and contributed to the success of Brexit in the uk, the increased share of votes secured by right-wing parties in a number of Western European countries, and the electoral gains of a number of right-wing parties in Eastern Europe. Anxiety about immigration contributed to Donald Trump’s victory in the United States. European countries, even those on the left like Sweden, have responded to rising numbers of refugees by tightening the rules for potential migrants. The European Union reached a deal with Turkey in 2016 to provide financial resources in exchange–among other things–for an increase in acceptance of refugees. At the same time, the sheer number of refugees in Jordan and Lebanon can potentially undermine government control in those countries.

The impact of civil wars in one country can spread to surrounding areas. isil’s ambitious campaigns have afflicted Syria and Iraq. Civil strife in Somalia has, as Seyoum Mesfin and Abdeta Beyene write, influenced the policies of Ethiopia.5 The farc insurgency in Colombia impacted Venezuela and Ecuador. Conflict in the Democratic Republic of the Congo (drc) drew in several neighboring states. Some regional conflicts have resulted in millions of deaths, most notably the war in the drc, with limited impact on and attention from wealthy industrialized countries. Wars in the Middle East, however, have been more consequential because they have led to the involvement of Russia and the United States, they are closer to Europe and have therefore generated more refugees, and Middle Eastern oil is a global commodity on which much of the world depends. Regional destabilization in the Middle East does matter for the West; regional destabilization in Central Africa may only matter for those who live in the neighborhood.

Direct confrontation between major powers has not occurred since the end of World War II. In well-governed areas, where civil wars are absent, the likelihood of great-power conflict is small. Territorial conquest has been delegitimized (though Russia’s annexation of Crimea stands as a recent exception to this norm). The existence of nuclear weapons has removed uncertainty about the costs of a confrontation between nuclear-armed states with assured second-strike capability. Great-power confrontations are, however, more likely in areas that are afflicted by civil strife, because instability and appeals from local actors could draw in major state actors with vested interests. This is especially true for the Middle East. Moreover, in countries on the periphery of Russia that were formerly part of the Soviet Union, especially those with sizeable Russian ethnic populations, the government in Moscow has demonstrated that it can increase the level of internal unrest. There is no guarantee of stability, even in countries that might have been stable absent external support for dissident groups that would otherwise have remained quiescent.

## 1AC – Cartels

#### Advantage Two is Cartels:

#### *Empagran* created circuit splits that prevent PROA.

Balde ’16 [Alen; January 2016; Submitted in fulfilment of the requirements for the Degree of Doctor of Philosophy School of Law College of Social Sciences University of Glasgow; *University of Glasgow,* “Private Antitrust Law Enforcement in Cases with International Elements;” KS]

The U.S. Supreme Court in the Empagran case opened a door to private plaintiffs being able to litigate their foreign antitrust injuries before the U.S. courts. Unfortunately, the Supreme Court did not show the path through this door, but referred the case back to the second Court of Appeals for a decision. The second Court of Appeals did not accept the Supreme Court’s invitation to walk through the door, but placed an unexpected obstacle before the door. This thesis submits that private litigants have been left without instructions1 as to how to overcome this obstacle and successfully enter through the door opened by the Supreme Court.

The Empagran case is considered to be the first antitrust litigation where the Supreme Court of the U.S. was asked to decide on the permissibility of foreign antitrust injury to be litigated before the U.S. courts.2 It is submitted that the Supreme Court’s Empagran decision opened wide the doors of the U.S. courts and thus permitted private plaintiffs who suffer antitrust harm outside the U.S. to bring private antitrust claims before the U.S. courts and seek compensation for their suffered antitrust injury.3 At this point, a reminder is necessary that particular caution is required to understand correctly the extent of the issues decided through Empagran, and the significance of the Supreme Court’s decision in particular for future antitrust litigation.4 This means that the outcome of Empagran cannot be considered as guidance on its own for private litigants and adjudicating courts on how to conduct adjudication in future litigation. The arguments brought before the courts through Empagran and the reasoning that the courts used in formulating their decisions enable us to understand that Empagran does not provide guidance for private antitrust litigation, in particular and most importantly, with regard to how to establish the existence of a relevant type of connection between litigated (foreign) private antitrust injury and anticompetitive effect (and antitrust injury) in the U.S. in order to have this antitrust injury litigated before the U.S. courts and obtain compensation.5

The Empagran litigation is not the last private antitrust litigation where private plaintiffs litigated their (foreign) private antitrust injury before the U.S. courts. Irrespective of confusions present in the reasoning of the adjudicating courts throughout Empagran and the questions these courts did not answer, private plaintiffs were not reluctant to continue to litigate their foreign antitrust injury before the U.S. courts. This antitrust litigation that private plaintiffs initiated after the Empagran litigation resulted in cases (i.e. post-Empagran cases) that will be analysed in this chapter.6

The metaphor offered at the beginning of this chapter included some colloquial words, i.e. doors, path, obstacle. Such words were used merely to illustrate in a simple way the legal issues, arguments, rulings, analysis and conclusions presented in detail and in a comprehensive manner in the previous chapter (i.e. chapter 2). As mentioned above, the analysis in this chapter (i.e. chapter 3) would not be possible without the existence of post-Empagran cases. Nevertheless, it is important to explain that the legal (i.e. primary) reason for conducting analysis in this chapter is not the existence of post-Empagran litigation itself, but the need to explore the relationship between the Empagran litigation and post-Empagran cases.

This chapter will analyse the nature of the relationship between Empagran and post-Empagran cases by providing answers to the following questions:

• Whether Empagran (i.e. decisions reached by the adjudicating courts) has influenced the adjudication process in post-Empagran litigation and to what extent;

• Whether post-Empagran courts perceive the decisions in the Empagran case as binding, undisputed legal precedents, or merely as advisory statements subject to further development and review;

• Whether post-Empagran litigation has provided encouragement and support to private litigants to walk through the door opened by the Supreme Court.

The question of the relationship between the Empagran litigation and subsequent cases is also of great practical value. It is important that adjudicating courts in post-Empagran litigation do not misinterpret the extent, reasoning, and nature of the decisions reached by the adjudicating courts in the Empagran saga. If there is misinterpretation then private antitrust law enforcement may take a questionable direction and, consequently, affect the rights of private plaintiffs who suffer foreign antitrust injury.

Therefore, it is important to be reminded of the analysis undertaken in chapter 2, which can be summarized as follows: the decisions in the Empagran litigation were based on several assumptions; the Empagran litigation raised more questions than it answered; the Empagran litigation did not provide guidance for future private antitrust litigation, and there exists an unresolved relationship between the Supreme Court’s acceptance of the possibility that the private plaintiffs litigate their foreign antitrust injury claim on the basis of the alternative theory (as long as the facts support the existence of the alternative theory7) and the position of the Second Court of Appeals with regard to proximate causation between anticompetitive effect (antitrust injury) in the U.S. and litigated (foreign) private antitrust injury being the legal standard under which private plaintiffs who suffer antitrust harm outside the U.S. can bring their private antitrust claims before the U.S. courts.

The analysis of how the Empagran decision was applied in subsequent litigation provides a practical opportunity to review how adjudicating courts are asked to consider problematic situations when they have only one, binding but unclear decision that can be classified as the only relevant precedent on the legal issue under adjudication.8 The law in this area is not definitively established9 and is not even sufficiently developed.10 Therefore, this chapter provides a critical evaluation of the existing approach that adjudicating courts have adopted in deciding whether foreign private antitrust injury can be compensated. The chapter also identifies the issues through post-Empagran cases which, according to this thesis, were correctly decided, and those which were not and, therefore, need to be changed in any future litigation.

2 TheSignificanceofthisChapter

A crucial proposition of this thesis is the submission that the Empagran litigation is a starting point for a new type of private antitrust law litigation. The Empagran litigation provided some analysis and decisions, but it has not definitively framed the area of private antitrust law enforcement within the international context. The Empagran litigation has raised a number of issues, some of which were decided (correctly/appropriately or not), but some were left open.11

#### Plan spurs cartel deterrence – solves under- and over- regulation.

Michaels ’16 [Ralf; 2016; Arthur Larson Professor of Law, Duke University School of Law; “Supplanting Foreign Antitrust,” <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4808&context=lcp>; KS]

The developing country may have a genuine interest in such supplanting – especially if the cartel is too powerful or too complex for the country's own authorities. A further interest in such supplanting is shared by developed and developing countries alike: the global interest in centralized regulation of a cartel.66 When a cartel transcends boundaries, separate regulation within each affected market is inefficient because multiple agencies are required to engage in similar regulation. This duplicates regulation costs for agencies and raises costs for both plaintiffs and defendants in antitrust litigation." Moreover, without coordination, such parallel and duplicative regulation can, in theory, lead to either over- or under-regulation.68 In practice it will more likely lead to underregulation, because no state would go above what is necessary for its own market, but some may not find it worthwhile to regulate the cartel.69 Transgovernmental coordination of antitrust regulation, the main alternative to centralized regulation, can lead to considerable costs, because agreements must be reached between different states. Thus, the most efficient way to regulate a multinational cartel is centralized regulation.

If centralized regulation is attractive, the most attractive regulator would appear to be a supranational institution. Such an institution does not exist, however. Hopes for a world antitrust court, for example within the WTO, have not materialized. Regional courts like the courts of the European Union are of little help for cases outside or beyond Europe. Thus, in the absence of such an institution, the question remains whether centralization can take place through the institutions of one of the affected countries, in particular of a developed country. Central regulation of the entire cartel by one developed country could be viewed as a stark example of positive comity.

Centralized enforcement by a developed country is not only based on a mutual interest, however. In addition, developed countries have a genuine interest in taking into account worldwide effects of a multinational cartel. As the U.S. Supreme Court argued in a somewhat different context "[P]ersons doing business both in this country and abroad might be tempted to enter into anticompetitive conspiracies affecting American consumers in the expectation that the illegal profits they could safely extort abroad would offset any liability to plaintiffs at home."70

This can be demonstrated with a simple thought experiment. Imagine a cartel makes supra-competitive profits of $1 billion worldwide, of which $100 million is made in the United States. If a U.S. court assigns treble damages to the class of U.S. purchasers, the cartel faces costs of $300 million, which leaves it with an overall profit of $700 million. As a consequence, the threat of treble damages in the United States alone is not a sufficient deterrent for the cartel. Importantly, the cartel is not even deterred from fixing prices in the U.S. market. Allowing only purchasers from the U.S. market to sue for treble damages thus leads to under-regulation, even for the U.S. market.71

Note that this assessment does not change when the cartel affects multiple countries with effective antitrust regimes. Even if multiple agencies around the world assess fines and damages with regard to the effect the cartel has on their markets, the cartel may remain under-regulated, because not all countries affected by the cartel will actually regulate. Imagine, in the hypothetical example above, that the global cartel makes sixty percent of its profits in developed countries and forty percent in developing countries without effective antitrust institutions. If, in this case, each of the countries that do regulate confined itself to the effect on its own market, the cartel would be regulated only with regard to sixty percent of its profits-it would, in other words, remain under-deterred.

Such under-regulation is not required by the restrictions international law places on extraterritoriality: Where foreign corporations are injuring foreign purchasers in a foreign market, one could argue that the United States lacks a sufficient connection to take those foreign purchases into account. But this argument is erroneous. As long as the regulating country is affected, it has jurisdiction to regulate the cartel, even if some of the effects are felt elsewhere. International law does not require that such regulation must be confined to the effects within the regulating country. Although effects create the basis for jurisdiction, what is being regulated is the conduct.

Indeed, the same result could be reached without direct regulation of foreign markets. Imagine the United States provided a remedy only to the U.S. purchasers, but that remedy was tenfold rather than threefold damages, because that was calculated as necessary to achieve deterrence. In this case, the cartel would be as effectively deterred as it would be by granting treble damages to foreign purchaser, but there would be no problem of extraterritoriality.7 2 If $1 billion is the amount necessary to deter the cartel from fixing prices on a global market that includes the United States, then the United States can legitimately assess this amount in order to protect its interests. As a matter of fact, public authorities regularly assess their fines on the basis of the cartel members' worldwide turnover.73

Moreover, even in a situation with existing antitrust regulation in various countries, it would be in every country's interest that the cartel be regulated also with regard to effects on those markets that have no effective enforcement regimes.74 If a supranational institution existed, it could appoint the country that should regulate the anti-competitive conduct.75 In the absence of such an institution, determining the appropriate regulator is harder but not impossible. Principles of positive comity, combined with conflict-of-laws rules, should make it possible for them to defer to the best-equipped country.76 This may often be the country in which most of the defendants are situated, or the country that was most affected by the cartel.

Regulation may thus be in the interest of the developed country. It is also in the interest of the developing country if enough of the previously discussed conditions are met. If a cartel affects a country without an effective antitrust regime, that country will, under most circumstances, benefit from effective regulation of the cartel, even if that regulation is performed by the institutions of a developed country. Under-regulation of the cartel would be worse for the developing country. These considerations are relevant under international law, too. Extraterritoriality is a problem for sovereignty: regulating events taking place in a foreign country threatens to impede that country's sovereignty. If a developing country raises a protest-a diplomatic protest, an amicus curiae brief, or even an informal complaint-this is relevant under international law. Even if the developed country has jurisdiction, the protest, as an expression of strong countervailing foreign interests, may make its exercise unreasonable.77 If the country does not raise such a protest, however, this will often mean that it does not perceive regulation by the developed country as an intrusion into its sovereignty. An explicit request, as provided under positive comity, should not be required.

#### International ag cartels dominate the food chain.

ETC 13, \*ETC, Action Group on Erosion, Technology and Concentration, staff and board members come from a variety of backgrounds, including community and regional planning, ecology and evolutionary biology, and political science; (September 2013, “Putting the Cartel before the Horse ...and Farm, Seeds, Soil, Peasants, etc.”, https://www.etcgroup.org/sites/www.etcgroup.org/files/CartelBeforeHorse11Sep2013.pdf)

Introduction: 3 Messages

ETC Group has been monitoring the power and global reach of agro-industrial corporations for several decades – including the increasingly consolidated control of agricultural inputs for the industrial food chain: proprietary seeds and livestock genetics, chemical pesticides and fertilizers and animal pharmaceuticals. Collectively, these inputs are the chemical and biological engines that drive industrial agriculture.

This update documents the continuing concentration (surprise, surprise), but it also brings us to three conclusions important to both peasant producers and policymakers…

1. Cartels are commonplace. Regulators have lost sight of the well-accepted economic principle that the market is neither free nor healthy whenever 4 companies control more than 50% of sales in any commercial sector. In this report, we show that the 4 firms / 50% line in the sand has been substantially surpassed by all but the complex fertilizer sector. Four firms control 58.2% of seeds; 61.9% of agrochemicals; 24.3% of fertilizers; 53.4% of animal pharmaceuticals; and, in livestock genetics, 97% of poultry and two-thirds of swine and cattle research. More disturbingly, the oligopoly paradigm has moved beyond individual sectors to the entire food system: the same six multinationals control 75% of all private sector plant breeding research; 60% of the commercial seed market and 76% of global agrochemical sales.1 Some also have links to animal pharmaceuticals. This creates a vulnerability in the world food system that we have not seen since the founding of the UN Food and Agriculture Organization. It’s time to dust off national competition / anti-combines policies and to consider international measures to defend global food security.

2. The “invisible hold” of the market is growing. For all the talk of the invisible hand of the free market, the market is evermore opaque and far from “free.” As the concentration grows, companies are more guarded with their information. Further, the investment companies that analyze markets have also become more concentrated and more proprietary (and their information is more expensive). As the “invisible hold” tightens, it is harder and harder for governments – and more so, peasants – to understand the level of food system control exercised by a handful of multinational enterprises. As a result, ETC’s data – in order to be accurate – is dependent upon 2011 figures. Be assured that corporate concentration in these sectors is not receding. Agribusiness must be legally obliged to provide full and timely data on sales and market share.

3. Climate research shows that we don’t know (that) we don’t know our food system: One positive outcome since our last update is that society in general – and governments in particular – are more aware of the threat posed by climate change to global food security. There is now a popular mantra (but not much movement) emphasizing the central importance of smallholder producers in meeting global food requirements in the decades ahead. We couldn’t agree more. To help policymakers move from mantra to marching orders, this Communiqué is accompanied by a poster contrasting the capacity of the Industrial Food Chain and the Peasant Food Web to address climate chaos. The poster raises 20 genuine questions. It is a work-in-progress. There may be more than one answer to the questions, but the data provides a basis for a fundamental change of mind and shift in policy direction. For some of the reasons cited already, the data policymakers need to make decisions are not always available (or accurate). As the United Nations Framework Convention on Climate Change prepares to receive the fifth assessment report of the Intergovernmental Panel on Climate Change over the coming months, we hope this report and accompanying poster will encourage a much needed constructive debate and complementary research on all of the issues we are raising.

Over the past half-century, the corporations that dominate the industrial food system have wrested control of the agricultural R&D agenda while concentrating power and influencing trade, aid and agricultural policies to fuel their own growth. There was cautious hope in the United States that a new era was dawning when, in 2009 – the first year of President Obama’s first term – the US Department of Agriculture and the Antitrust Division of the Department of Justice (DOJ) announced a joint investigation into anticompetitive practices in agriculture. The news that Monsanto specifically had been required to turn over internal documents related to seed prices raised the level of optimism. But when the DOJ dropped the Monsanto investigation almost 3 years later without explanation, it was clear that antitrust fervour had fizzled, despite the breathless claims2 (which happen to be true) that anticompetitive practices in agriculture pose a threat to public health and security.

#### Africa has few civil lawsuits – the plan can resolve market failure.

Jenny ’20 [Frederic; January 22; Professor of Economics, ESSEC Business School, Paris, France; Chair OECD Competition Committee; The Antitrust Bulletin, “An Essay: Can Competition Law and Policy Be Made Relevant for Inclusive Growth of Developing Countries?” <https://journals.sagepub.com/doi/full/10.1177/0003603X19898621>; KS]

On closer scrutiny, the competition experience of South Africa, which is by far the most advanced of the African countries reviewed and has a strong judiciary, so far at least, is not entirely encouraging.3 There have been a few civil lawsuits based on the claims of competition violations and those have been introduced not by “outsiders” or poor victims of anticompetitive abuses but by already fairly established competitors or institutional customers. One plaintiff was South African Airline Nationwide, which brought a claim against national carrier South African Airways (SAA); another was the City of Capetown (which brought a suit against a number of construction companies for civil damages arising from their agreement to rig bids in relation to the construction of the Green Point Stadium in Cape Town).

Section 38(c) of the South African Constitution allows for class actions for an infringement of any fundamental right in the Bill of Rights and this applies to competition law. There have been two class action cases against bakers (The Trustees for the Time Being for the Children’s Resource Centre Trust and Others v. Pioneer Foods (Pty) Ltd and Others, and Mukaddam and Others v. Pioneer Foods (Pty) Ltd and Others) following the prosecution of the bread price-fixing cartel by the Competition Commission in 2010. The Pioneer case was the first of its kind and was brought by five individuals together with several NGOs against Tiger Brands, Pioneer Foods, and Premier Foods for their participation in the bread cartel. It allowed the Supreme Appeals Court of South Africa to clarify a number of issues, particularly those pertaining to the certification of the class. There is some hope that these precisions will lead to an increase in the number of class actions in general. Those cases are still pending, however, nine years after the Competition Tribunal decision.4

Finally, the authors also propose a pro-development agenda with respect to the advocacy function of competition authorities in African countries. This agenda targets both domestic public restraints to competition and transnational anticompetitive practices.

With respect to domestic public restraints to competition, the authors suggest that the advocacy function of competition authorities (and their market investigation powers) should be aimed at regulatory laws that unnecessarily restrict competition; at state-owned monopoly boards, prevalent in African countries, trading in various commodities (including agricultural commodities) with poor results; and at restrictive national trade laws which often protect domestic lobbies to the detriment of consumers and also of newcomers.

With respect to transnational anticompetitive practices that often target developing countries where competition law enforcement is weak and victimize the consumers and the firms of these countries through a combination of exploitative and exclusionary practices, the authors call on the international community to renew efforts to tackle the vexing issue of export cartels by finding inspiration in innovative mechanisms inspired by the spirit of positive comity which has been adopted in other areas such as the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.

#### Market failures depress growth in ag.

Nair ’19 [Gaylor Montmasson-Clair and Reena; Senior economist at Trade and Industrial Policy Strategies (TIPS), a South Africa based economic policy think-tank, where he leads work on sustainable growth. He has done extensive research on the transition to a sustainable development pathway from a developing country perspective; Founding director of and principal consultant at Optimal Competition and Compliance Solutions based in Lusaka, Zambia. He served as CEO of the Competition Authority in Botswana from 2011 to 2016 and as Executive Director of of the Competition and Consumer Protection Commission of Zambia during the period 2008–2011; Competition Law and Economic Regulation Addressing Market Power in Southern Africa, “Cartel Enforcement in the Southern Africa Neighborhood,” pg. 191-192; KS]

Economic regulation, competitive outcomes and inclusive growth

The presence and persistence of a range of market failures is the most prominent justification for economic regulation. Market failures arise when resources are not allocated or priced efficiently, and when a more optimal outcome would result from reallocating resources and altering prices. Market failures, along with other constraints, impede the poor and marginalised from accessing markets and benefiting from growth, thereby perpetuating inequality and non-inclusive growth (Ali and Son, 2007; Ianchovichina and Lundstrom, 2009; see also chapter 5, this volume).

One type of market failure, and a persuasive justification for regulation, is the presence of natural monopolies. Typical industries that have natural monopoly characteristics and that are commonly subject to regulation include electricity transmission, liquid fuel pipelines, telecommunication infrastructure and water supply systems. In South Africa, economic regulation has focused on regulating the natural monopoly parts of these value chains, which were formerly stateowned and subsequently privatised (Roberts and Mondliwa, 2014).

Another type of market failure arises from non-competitive markets. This can occur when a single firm or groups of firms possess persistent market power which results in less than optimal output being produced with higher resultant prices. The lack of effective competition could result in dominant firms abusing their market power or engaging in collusive behaviour, obtaining rents at the expense of consumers and potential competitors. This has negative implications for productivity and job creation. Uncompetitive markets also result in lower levels of innovation, reduced choice for consumers and poorer quality of goods or services. Not only are direct consumers harmed, but the viability of downstream industries is affected if the product in question is an intermediate input. Furthermore, firms with market power that control essential facilities that cannot easily be replicated or that control key inputs could abuse their dominance by limiting access to their facilities, thereby creating barriers to entry. Regulation can be a way to curb excesses in market power by regulating access to infrastructure as well as other market outcomes, including prices (Viscusi et al., 2000, in Roberts and Mondliwa, 2014).

South Africa’s history and economic policies under apartheid created markets that are highly concentrated, with a few firms in strategic industries possessing considerable market power. Economic opportunity only catered to the interests of minority groups. The state owned and controlled several strategic sectors, such as energy, telecommunications, mining, agriculture and several intermediate industrial product markets. Even following the liberalisation and privatisation trends of the 1990s, most of these industries continue to be highly concentrated while some remain state-owned (Makhaya and Roberts, 2013). Participation by new entrants has typically been constrained through structural or strategic barriers to entry (or both).

#### Absence of antitrust raises prices and guarantees food insecurity.

Nwuneli ’18 [Ndidi; August 7; Co-Founder of AACE Food Processing & Distribution, Managing Partner of Sahel Consulting Agriculture & Nutrition, Founder of LEAP Africa, and a 2018 Aspen Institute New Voices fellow; Project Syndicate, “The High Cost of Food Monopolies in Africa,” <https://www.project-syndicate.org/commentary/africa-monopoly-food-prices-by-ndidi-okonkwo-nwuneli-2018-08>; KS]

Many consumers in Africa spend a disproportionate percentage of their household income on food. One of the biggest reasons is the failure of regional governments to ensure competition in the food sector, which has led to higher prices and made local agriculture less competitive.

LAGOS – In May, global food prices increased 1.2%, reaching their highest level since October 2017. This upward trajectory is having a disproportionate impact in Africa, where the share of household income spent on food is also rising. To ensure food security, governments must work quickly to reverse these trends, and one place to start is by policing the producers who are feeding the frenzy.

According to data compiled by the World Economic Forum, four of the world’s top five countries in terms of food expenditure are in Africa. Nigeria leads the list, with a staggering 56.4% of household income in 2015 spent on food, followed by Kenya (46.7%), Cameroon (45.6%), and Algeria (42.5%). By comparison, consumers in the United States spend the least globally (6.4%), far less than people in emerging economies like Brazil (16%) and India (30%).

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

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

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

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

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

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

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

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

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

Ultimately, it is the responsibility of political leaders to protect consumers from collusion and price-fixing. There is no question that Africa’s businesses need space to innovate and grow, but their success should never come at the cost of someone else’s next meal.

#### Goes nuclear.

Cribb 19, \*Julian Cribb, Principal of Julian Cribb & Associates, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director of National Awareness at the Commonwealth Scientific and Industrial Research Organisation; (August 23rd, 2019, “FOOD AS AN EXISTENTIAL RISK”, https://www.cambridge.org/core/books/abs/food-or-war/food-as-an-existential-risk/8C45279588CD572FE805B7E240DE7368)

Although actual numbers of warheads have continued to fall from its peak of 70,000 weapons in the mid 1980s, scientists argue the danger of nuclear conflict in fact increased in the first two decades of the twentyfirst century. This was due to the modernisation of existing stockpiles, the adoption of dangerous new technologies such as robot delivery systems, hypersonic missiles, artificial intelligence and electronic warfare, and the continuing leakage of nuclear materials and knowhow to non- nuclear nations and potential terrorist organisations.

In early 2018 the hands of the ‘Doomsday Clock’, maintained by the Bulletin of the Atomic Scientists, were re-set at two minutes to midnight, the highest risk to humanity that it has ever shown since the clock was introduced in 1953. This was due not only to the state of the world’s nuclear arsenal, but also to irresponsible language by world leaders, the growing use of social media to destabilise rival regimes, and to the rising threat of uncontrolled climate change (see below).12

In an historic moment on 17 July 2017, 122 nations voted in the UN for the first time ever in favour of a treaty banning all nuclear weapons. This called for comprehensive prohibition of “a full range of nuclear-weapon-related activities, such as under- taking to develop, test, produce, manufacture, acquire, possess or stockpile nuclear weapons or other nuclear explosive devices, as well as the use or threat of use of these weapons.”13 However, 71 other countries – including all the nuclear states – either opposed the ban, abstained or declined to vote. The Treaty vote was nonetheless interpreted by some as a promising first step towards abolishing the nuclear nightmare that hangs over the entire human species.

In contrast, 192 countries had signed up to the Chemical Weapons Convention to ban the use of chemical weapons, and 180 to the Biological Weapons Convention. As of 2018, 96 per cent of previous world stocks of chemical weapons had been destroyed – but their continued use in the Syrian conflict and in alleged assassination attempts by Russia indicated the world remains at risk.14

As things stand, the only entities that can afford to own nuclear weapons are nations – and if humanity is to be wiped out, it will most likely be as a result of an atomic conflict between nations. It follows from this that, if the world is to be made safe from such a fate it will need to get rid of nations as a structure of human self-organisation and replace them with wiser, less aggressive forms of self-governance. After all, the nation state really only began in the early nineteenth century and is by no means a permanent feature of self-governance, any more than monarchies, feudal systems or priest states. Although many people still tend to assume it is. Between them, nations have butchered more than 200 million people in the past 150 years and it is increasingly clear the world would be a far safer, more peaceable place without either nations or national- ism. The question is what to replace them with.

Although there may at first glance appear to be no close linkage between weapons of mass destruction and food, in the twentyfirst century with world resources of food, land and water under growing stress, nothing can be ruled out. Indeed, chemical weapons have frequently been deployed in the Syrian civil war, which had drought, agricultural failure and hunger among its early drivers. And nuclear conflict remains a distinct possibility in South Asia and the Middle East, especially, as these regions are already stressed in terms of food, land and water, and their nuclear firepower or access to nuclear materials is multiplying.

It remains an open question whether panicking regimes in Russia, the USA or even France would be ruthless enough to deploy atomic weapons in an attempt to quell invasion by tens of millions of desperate refugees, fleeing famine and climate chaos in their own homelands – but the possibility ought not to be ignored.

That nuclear war is at least a possible outcome of food and climate crises was first flagged in the report The Age of Consequences by Kurt Campbell and the US-based Centre for Strategic and International Studies, which stated ‘it is clear that even nuclear war cannot be excluded as a political consequence of global warming’.15 Food insecurity is therefore a driver in the preconditions for the use of nuclear weapons, whether limited or unlimited.

## 1AC – Judicial Avoidance

#### Advantage Three is Judicial Avoidance:

#### *Empagran* inserted international relations into legal doctrine – enables judicial interference in foreign affairs.

Michaels ’11 [Ralf Michaels; 2011; Professor of Law, Duke University School of Law; International Law in the U.S. Supreme Court; “Empagran's Empire: International Law and Statutory Interpretation in the U.S. Supreme Court of the Twenty-First Century,” Part V, Section D. p. 533-546]

Yet another boundary is broken down for the sake of international harmony, that between international law and international relations. Gerald Neuman’s suggestion that “in Empagran, … Justice Breyer subtly gave the Government more law than it wanted, by invoking the Charming Betsy canon,”14 may not be exact. The Charming Betsy presumption has traditionally been a legal doctrine of statutory interpretation, formulated to resolve actual conflicts with international law. “Work together in harmony,” by contrast is a doctrine of international relations, formulated to avoid potential conflicts with foreign sovereigns. Rather than insert the Charming Betsy doctrine into foreign relations (as Neuman suggests), the Court inserts international relations into the Charming Betsy doctrine. In Empagran, the Court establishes itself as an organ of international relations, and international law is merely an element in the assessment of the best approach.

Of course, the federal courts have played a role in foreign relations since the founding of the republic, as David Sloss has demonstrated,15 and foreign relations have always been a consideration for the Charming Betsy presumption. In the early days of the Republic, the deference to foreign law in statutory interpretation was often based on a desire to avoid conflict with stronger countries.16 This could imply that the Charming Betsy presumption was historically tied to the status of the United States as a weak nation,17 and as a consequence, it could have become dispensable once the United States became the world’s only superpower.18 But the weak nation reasoning cannot explain everything. Not only has the doctrine survived the rise of the United States in decisions after World War II.19 More importantly, Charming Betsy was not an isolated U.S. decision: around the same time, British courts announced a similar doctrine for the British Empire, then the world’s biggest power. In Le Louis, Sir William Scott (later Lord Stowell) held that the new British antislavery act abolished slavery but did not allow seizure of foreign ships involved in slave trade.20 The legal basis was a canon of interpretation similar to the Charming Betsy: “neither this British Act of Parliament, nor any commission founded on it, can affect any right or interest of foreigners, unless they are founded upon principles and impose regulations that are consistent with the law of nations. That is the only law which Great Britain can apply to them; and the generality of any terms employed in an Act of Parliament must be narrowed in construction by a religious adherence thereto.”21

This suggests that the Charming Betsy presumption traditionally represented, at least primarily, not a pure policy assessment but an intrinsically legal doctrine. Even if its application was meant to avoid international discord, the only relevant discord was that created by violations of the law of nations.22 In Empagran, by contrast, the Court speaks not of compatibility with international law, but instead of compatibility with foreign “sovereign authority” and “legitimate sovereign interests.”23 It thereby turns the legal doctrine into a policy. Scholars have interpreted the Charming Betsy presumption as an implied deference of international relations matters to the Executive.24 The Court in Empagran apparently accepts the view of international law as international relations, but draws a different conclusion: if international law is international governance, then the courts themselves, first and foremost the U.S. Supreme Court, must adopt the role of global governor.25 In a world in which diplomatic protests addressed to the executive are being supplemented by amicus briefs addressed to the Court—in the Empagran case, seven foreign governments submitted such briefs—26 this seems a logical step.

This rise of international relations as basis of the Charming Betsy presumption coincides with the decline of international law. Dutifully, Justice Breyer cites § 403 of the Restatement on Foreign Relations, but a real analysis of whether the assertion of jurisdiction would violate § 403, or international law more generally, is absent. More strikingly, there is also no detailed analysis of “potentially conflicting laws.”27 If Justice Breyer’s thoughts on the globalization of law were apt, one might expect the potential for such conflicts to be low. Elsewhere, he has claimed that “[t]he commercial law of the various states, for example, has become close to a single, unified body of law.“28 Indeed, price-fixing is banned in nearly every legal system in the world (a point emphasized in Empagran, ironically, by the defendants). Plaintiffs’ lawyers had even claimed that the ban on price-fixing amounted to a principle of customary international law, a suggestion the lower court rejected.29 Moreover, the effects doctrine for establishing jurisdiction in antitrust matters, whose contours were still in dispute worldwide when the U.S. Supreme Court previously addressed the application of the Sherman Act against British reinsurers in Hartford Fire, 30 has since become universally accepted, albeit with variants.

However, Justice Breyer does not consider such agreement on ends to be sufficient to assume similarity: “[E]ven where nations agree about primary conduct, say, price fixing, they disagree dramatically about appropriate remedies.”31 Interestingly, Sir William Scott argued similarly about the slave trade in Le Louis: “Nor is it to be argued, that because other nations approve the ultimate purpose, they must therefore submit to every measure which any one state or its subjects may inconsiderately adopt for its attainment.”32 In Empagran, this speculation might have suggested an actual comparative law analysis. For example, the Court might have considered distinguishing between plaintiffs from states that have a functioning antitrust regulation scheme (and had said so in their amicus curiae briefs) and those from states without such a scheme. Indeed, in other contexts, Justice Breyer has famously suggested how fruitful it is to look at other nations’ laws, even where this is not mandated.33 When he speaks about the Empagran opinion in presentations, he likes to point out that the Court, in order to decide, “had to know something about the antitrust law of the European Union.”34 The Empagran decision itself displays little such analysis. The Court considered a detailed comparative law analysis “too complex to prove workable”:

Courts would have to examine how foreign law, compared with American law, treats not only price fixing but also, say, information-sharing agreements, patentlicensing price conditions, territorial product resale limitations, and various forms of joint venture, in respect to both primary conduct and remedy. The legally and economically technical nature of that enterprise means lengthier proceedings, appeals, and more proceedings--to the point where procedural costs and delays could themselves threaten interference with a foreign nation's ability to maintain the integrity of its own antitrust enforcement system.35

The image remains of a Court that is not only aware of its role in an interdependent world, but also willing and equipped with the tools necessary to fulfill that role, even if it ultimately prefers caution over action. The tools are mainly those of international relations, not international law. Deference to international law gives way to deference to foreign sovereigns; detailed analysis of the exact requirements of international law gives way to an analysis of the likelihood of international conflict. Forty years earlier, the Sabbatino Court was criticized for adopting its own “strong sense … that its engagement [in foreign relations] may hinder, rather than further, this country's pursuit of goals both for itself and for the community of nations as a whole in the international sphere.”36 No similar reaction to Empagran has occurred.

#### The use of avoidance doctrines to limit transnational litigation has gone too far – interferes with foreign affairs.

Bookman ’15 [Pamela; May 2015; Academic Fellow, Columbia Law School; Stanford Law Review; "Litigation Isolationism," vol. 67, p. 1081-1144]

Avoidance doctrines strive to prevent federal courts from interfering with foreign relations policies that should be controlled by the political branches and from disrupting international comity in the process. But, as judicially driven developments mostly uninformed by international law or practice, they are simply ill equipped to do so. A signature feature of avoidance doctrines is the lack of political branch input and the domination of the area by courts. U.S. courts were long criticized for expanding transnational litigation. Today, courts have gone too far in the opposite direction.

Entertaining "too little" transnational litigation can raise the same separation of powers concerns as entertaining too much. In articulating the costs to U.S. democracy of international human rights litigation, Curtis Bradley has noted that the separation of powers problems that come from courts "invent[ing]" procedures to facilitate that kind of litigation (such as holding that customary international law has the status of federal common law) are likewise apparent in judicially created doctrines designed to limit such litigation (such as the political question doctrine and international comity).270 The same can be said of similar judicially driven developments in areas of transnational litigation more generally. Cabining transnational overreach through judicially created avoidance doctrines does little to ameliorate the separation of powers problem the overreach created. The problem is a result of court (as opposed to political branch) control over these issues. Avoidance has not made that go away. Instead, it has flipped the question to whether the federal courts are now excluding (rather than including) transnational litigation out of keeping with political branch prerogatives and in a manner that interferes with the executive branch's conduct of foreign affairs. 271

#### Entropy in foreign affairs is perceived as weakness.

Stephan ’19 [Paul; Fall 2019; John C. Jeffries,Jr., Distinguished Professor, University of Virginia School of Law; Virginia Journal of International Law; “One Voice in Foreign Relations and Federal Common Law,” vol. 60, p. 1-52] \*\*Modified for ableist language

One can reframe the question as whether, on average, the entropy generated by the federal courts in the particular field of foreign relations is likely to be greater than that produced by democratically accountable actors. Three arguments support an affirmative answer. The first focuses on inputs, that is the institutional structure that channels information to decisionmakers. The second considers flexibility, that is the institutional structure that allows a decisionmaker to change direction in the face of new information. The third rests on the virtues of political accountability. All three indicate that the federal judiciary is particularly ~~disabled~~ when it comes to carrying out foreign relations.

First, federal judges, unlike political actors, do not have direct and current access to information relevant to foreign affairs. Aside from general resources that any engaged person can find, federal judges depend on the advocates who appear before them to inform them about the outside world. Judges cannot commission studies or order briefings by specialists in the public and private sector. They are prisoners of those who seek action (or inaction) from them to a greater extent than actors in the political branches. State legislators, executive officials, and members of Congress face lobbying, but they do not depend exclusively on it. In contrast, judges hear only from lobbyists in the form of litigants.

Second, by convention in the U.S. legal culture, decisions are meant to be sticky. The power that judges wield depends fundamentally on their capacity to be persuasive. Stability is one component of persuasiveness. The absence of stability is what defines arbitrariness. Thus courts are expected to overrule their precedents only with caution, and ideally with advance warning. Periods of sudden transformations in judge-made law are problematic, even where they seem necessary.186

In the abstract, stability might be a desirable feature in foreign relations, but other considerations apply. In the increasingly interconnected and dangerous modern world, flexibility and nimbleness can be essential. Dramatic surprises can shock the system - think of Nixon's trip to China or the 9/11 attacks. Pragmatic decision-making might need to disregard general principles. 187

At the end of the day, the particular weakness of the federal courts when addressing foreign relations is what many might see as their particular strength- their lack of political accountability. Economic, political, and social pressures give the States incentives to cooperate with the outside world. Nothing similar disciplines judges who prefer the parochial interests of the litigants who appear before them to the general national welfare. The point is not that federal judges as a class are parochial, but rather that life tenure has as a necessary if incidental consequence an inability to weed out those who are.

#### Infinite foreign policy crises cause great power wars.

Edelman and Brands 17 [Hal Brands is senior fellow at the Center for Strategic and Budgetary Assessments (CSBA) and Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins School of Advanced International Studies (SAIS). Eric Edelman is counselor at CSBA and the Hertog Distinguished Practitioner in Residence at SAIS, June 21, 2017, “America and the Geopolitics of Upheaval,” Foreign Policy, <http://www.foreignpolicyi.org/content/america-and-geopolitics-upheaval>]

"The essence of a revolution is that it appears to contemporaries as a series of more or less unrelated upheavals,” Henry Kissinger wrote in 1969. “But the crises which form the headlines of the day are symptoms of deep-seated structural problems.” Kissinger wrote this passage as the postwar international system was coming under unprecedented strain, with profound shifts in the global distribution of power driving incessant disruptions in U.S. foreign policy. His admonition applies just as well today, at the onset of a new era of upheaval. During Donald Trump’s presidency and after, U.S. foreign policy is likely to be wracked by crises. The instability and violence along a resurgent Russia’s periphery, the growing frictions with an increasingly assertive China, the provocations of a rapidly nuclearizing North Korea and the profound chaos at work throughout the Middle East: these and other challenges have recently tested U.S. officials and are likely to do so for the foreseeable future. The world now seems less stable and more dangerous than at any time since the Cold War; the number and severity of global crises are increasing. Yet crises do not occur in a vacuum; they are symptomatic of deeper changes in the international order. Accordingly, America’s responses will be ill-informed and astrategic unless Washington first forms a deeper conception of the current moment. The geopolitical changes underway are often framed in terms of “polarity”—the debate on whether America’s “unipolar moment” is over and a multipolar world has emerged. But this debate is misleading. On the one hand, discussions of polarity frequently exaggerate American decline, obscuring the fact that even though Washington’s international superiority has diminished, its global lead over any single challenger remains quite impressive. On the other hand, the polarity debate actually obscures both the degree and breadth of the ongoing changes in the international system, and of the challenges facing American officials. The fundamental fact of international politics today is that the post–Cold War era has ended. The defining features of that period were uncontested U.S. and Western primacy, marked declines in ideological struggle and great-power conflict, and remarkable global cooperation in addressing key international-security challenges. Now, however, the world has returned to a more normal—which is to say, more dangerous and unsettled—state. The core characteristics of the emerging era are the gradual erosion of U.S. and Western primacy, revived great-power competition across all three key regions of Eurasia, renewed global ideological struggle, and empowerment of the agents of international strife and disorder. What makes the present period so tumultuous is that these forces often compound one another’s destabilizing effects; moreover, their collective impact is magnified by a growing uncertainty about whether America and other traditional defenders of the international system will continue playing that role in the future. American primacy is not dead, in other words, and true multipolarity is still a long ways off. But U.S. primacy is far more contested than at any time in a quarter-century, and the friendly contours of the post–Cold War system have given way to a darker and more challenging environment. The best way to understand the present era is to compare it to the previous one. The post–Cold War era was defined by four phenomena that made it historically favorable to American interests. The first was uncontested U.S. primacy. America emerged from the Cold War with clear economic dominance, possessing nearly 25 percent of global GDP in 1994. It controlled nearly 40 percent of world defense outlays, along with utterly unrivaled advantages in global power-projection capabilities. Crucially, these capabilities not only gave Washington an enormous lead over any geopolitical competitor; they also provided the ability—as Saddam Hussein discovered in 1991—to marshal decisive military might in virtually all the key strategic regions around the world. In the nineteenth century, the British ship of the line symbolized London’s global primacy; in the late twentieth century, the American carrier strike group symbolized an even more imposing preeminence. Nor was American dominance purely unilateral, because it was powerfully accentuated by the strengths of the broader Western coalition. In 1994, America’s treaty allies in Europe and the Asia-Pacific accounted for 47 percent of global GDP and 35 percent of global military spending, giving Washington and its closest friends upward of 70 percent of global economic power and military spending. Throughout the post–Cold War era, allied involvement thus lent added force to U.S. diplomacy on key issues of international order; from the Gulf War to the war in Afghanistan, allied contributions reinforced America’s ability to project military power overseas. This was no balance of power; it was one of the most pronounced imbalances the world had ever seen. U.S. dominance was also evident in a second phenomenon—the decline of international ideological competition. Francis Fukuyama’s “end of history” thesis has been much derided, but it captured three indisputable facts about the post–Cold War era: that democracy and markets were spreading more widely than ever before; that there was no credible global competitor to the liberal-capitalist model; and that even former U.S. enemies, such as Russia, and authoritarian states, such as China, were making unprecedented efforts to integrate into the liberal order either economically, politically or both. To be clear, Western concepts of human rights and political democracy were far from fully accepted in these countries, and Russian and Chinese leaders—among others—sooner or later came to see liberal proselytism as a grave threat. But the intense ideological struggles of the twentieth century were clearly over, and the liberal model seemed incontestably ascendant. These first two phenomena related to a third—the remarkable great-power comity of the post–Cold War era. The end of the Cold War did not, as was widely expected, see a fragmenting of America’s alliances, or a resurgence of Japanese and German revisionism. Rather, the major Western powers remained tied to America, largely because Washington continued to provide crucial global public goods such as security and leadership of an open global economy. Moreover, the sheer geopolitical dominance of the Western coalition meant that it was dangerous if not impossible for countries like Russia and China to mount serious great-power challenges of their own. Admittedly, there remained sometimes-serious disagreements between the United States and these countries, over issues from NATO enlargement to Taiwan, and those disagreements would grow more pronounced with time. But the danger of great-power war was nonetheless historically low during the 1990s, and great-power rivalries were more muted than at any time since the Concert of Europe. All of these characteristics fed into a final post–Cold War phenomenon: remarkable multilateral cooperation in addressing the relatively mild international disorder of the day. With great-power conflict dormant, U.S. foreign policy and the international community focused largely on combating lesser geopolitical “spoilers,” from ethnic cleansing to mass-casualty terrorism to the actions of aggressive regional powers such as Iraq or North Korea. These efforts, in turn, were greatly aided by the relatively tranquil state of international politics. The absence of great-power conflict made it far easier to organize broad coalitions to confront malevolent actors, whether Saddam Hussein in 1990–91 or Al Qaeda after 9/11. In the same vein, great-power peace allowed America and its allies to devote increasing attention to other forms of post–Cold War disorder. The fact that NATO could focus on “out of area” interventions for roughly two decades after the Soviet collapse, for instance, was directly related to the paucity of more traditional geopolitical threats. It would be a mistake, of course, to exaggerate how benign or pliable the post–Cold War environment really was. The “global disorder” of the period hardly seemed mild for the victims of catastrophic terrorism or ethnic cleansing; U.S. primacy was not omnipotence, as Washington’s travails in places from Mogadishu to Srebrenica to Helmand amply demonstrated. But by any meaningful historical comparison, the structure of international politics was uniquely conducive to the promotion of U.S. interests and ideals—a fact that is now the source of some nostalgia as the global system changes in five significant ways. The first key structural shift underway is the erosion of U.S. and Western primacy. It is incorrect to see this change as a transition from unipolarity to multipolarity, for true multipolarity will not arrive anytime soon. The United States still possesses substantial economic advantages over its closest competitor, China, namely an $18 trillion GDP that (as of 2015) was more than $7 trillion larger than China’s, and a per-capita GDP roughly four times that of China. U.S. defense spending also remains around three times that of China, and Washington maintains enormous advantages in the power-projection capabilities—aircraft carriers, advanced tactical aircraft, nuclear-powered submarines and others—that allow it to command the global commons and exert disproportionate influence around the world. What has happened over the past fifteen years, however, is that the extent of U.S. and Western primacy has diminished. The U.S. shares of global wealth and military spending have declined from 25 percent and 42 percent, respectively, in 2004, to around 22 and 34 percent in 2015. The drop-off among America’s allies has been more severe. U.S. allies in Europe and the Asia-Pacific commanded 47 percent of global GDP and 35 percent of global military spending in 1994; those shares had fallen to 39 and 25 percent, respectively, by 2015. Moreover, many of America’s most powerful allies—particularly in Europe—have undergone severe military decline. The British Royal Navy once ruled the waves, but now struggles to rule even the waters around the home islands; the German army faces equipment shortfalls so severe that its troops have had to exercise with broomsticks in place of machine guns. Western overmatch remains impressive by historical standards, but the global playing field is slanted much less dramatically than before. Meanwhile, the relative positions of America’s principal competitors have improved significantly. Russian economic power remains unimpressive, but an aggressive military modernization program has roughly doubled defense spending over a decade while also developing the capabilities needed to compete with the West—airborne assault units, special-operations forces, ballistic and other missile systems, and anti-access/area-denial capabilities, among others. China, meanwhile, has expanded its share of global wealth more than threefold, from 3.3 to 11.8 percent, between 1994 and 2015, and its share of world military spending more than fivefold, from 2.2 to 12.2 percent. As in Russia’s case, China’s military buildup has featured the tools—ballistic and cruise missiles, diesel-electric and nuclear submarines, advanced air defenses, and fourth-generation fighters—needed to offset longstanding U.S. advantages in the Asia-Pacific, as well as capabilities, such as aircraft carriers, needed to project Chinese power even further afield. The uncontested U.S. primacy of the 1990s has become the highly contested primacy of today. This is no academic distinction; the pernicious effects of this shift are already being seen. The decline of allied military power has made it harder for those allies to defend themselves against growing security threats, and to make more than token military contributions to addressing global challenges such as the rise of the Islamic State. Secretary of Defense Robert Gates famously warned in 2011 that NATO faced a “dim if not dismal future” if European capabilities continued to erode; American frustration has only become more pronounced since then. More fundamentally still, the changing power balance means that U.S. rivals and adversaries now have greater ability to shift the international order to suit their own preferences, a factor driving a second key shift in global politics today. If great-power comity was the post–Cold War norm, great-power competition is the standard today. Authoritarian rivals that were never fully reconciled to the post–Cold War order, and accepted it only to the degree compelled by U.S. and Western primacy, are now using their greater relative power to push back against that order in key geopolitical regions from East Asia to the Middle East to eastern Europe. Because Washington’s principal adversaries can concentrate their resources regionally, rather than having to distribute them globally, the power shifts that have occurred in recent years are having outsized effects at the regional level. And because the regional orders now being challenged have been the foundation of the broader post–Cold War system, these countries are effectively subverting the system “from the bottom up.” Consider Chinese behavior in East Asia. Chinese leaders always saw America’s post–Cold War dominance as a transitory condition to be suffered for a time, not something to be welcomed forever. And so as China’s geopolitical potential has soared, Beijing has taken bolder steps to erect a Sino-centric regional order. It has asserted expansive maritime claims and used techniques such as island building to shift facts on the ground without risking a premature military clash with America. It has challenged longstanding norms such as freedom of navigation in the South China Sea, and steadily increased efforts to coerce its neighbors. It has probed and worked to weaken U.S. alliances and partnerships, by simultaneously wooing and intimidating America’s regional friends. Finally, Beijing has conducted a major military buildup focused precisely on capabilities that will give it dominance over its neighbors and prevent the United States from intervening in their defense. These efforts are now having an accumulating effect. Chinese coercion has dramatically altered perceptions of momentum and power in the region, while the Chinese buildup has made the outcome of a Sino-American war over Taiwan or other regional hotspots far more doubtful. Chinese economic diplomacy has drawn many countries in the region closer into Beijing’s economic orbit. “America has lost” the struggle for regional supremacy, President Rodrigo Duterte of the Philippines announced in 2016—an exaggeration, surely, but a marker of how contested the region has become. Great-power competition is even more unvarnished in Europe, where a militarily resurgent Russia is reasserting lost influence and undoing key aspects of the post–Cold War settlement. Moscow has waged wars of conquest against Georgia and Ukraine; it has worked to undermine NATO and the European Union through efforts ranging from paramilitary subversion, to military intimidation, to financial support for anti-EU and anti-NATO politicians and other intervention in Western political processes. In doing all of this, Russia has fundamentally contested the notion of a post–Cold War Europe whole, free and at peace; it has challenged—with some success—the institutions that have long maintained security and prosperity in the region. And as with China, these actions have been underwritten by a military buildup that has restored Russian overmatch along NATO’s exposed eastern flank and enhanced Moscow’s ability to project power as far afield as the Middle East. Russia has become an ambitious great power again: it is asserting its prerogatives in ways that only seem anomalous in contrast to the remarkable cooperation of the post–Cold War era. Finally, geopolitical revisionism is alive and well in the Middle East. Iran is not in the same power-political class as Russia or China, but it is a regional power seeking to assert regional mastery. It is doing so via the use of proxies and its own forces in conflicts in Syria, Yemen and Iraq, via the weaponization of sectarianism in countries across the region, and via investments in asymmetric capabilities such as ballistic missiles and special-operations forces. This agenda has led Tehran into conflict with U.S. security partners such as Egypt, Saudi Arabia and the United Arab Emirates; it has contributed significantly to the instability that plagues the region. Each of these geopolitical challenges is different, of course. But taken collectively, they represent a geopolitical sea change from the post–Cold War era. The revival of great-power competition entails sharper international tensions than have been known for decades, and the return of Cold War phenomena such as arms races and security dilemmas. It entails intensifying conflicts over the global rules of the road, on issues from freedom of navigation in the South China Sea to the illegitimacy of altering borders by force. It entails starker struggles over states that reside at the intersection of rival great powers’ spheres of influence, such as the Philippines, Ukraine and Iraq. Finally, it raises the prospect that great-power rivalry could lead to great-power war—a phenomenon that seemed to have followed the Soviet Union onto the ash heap of history with the end of the Cold War. The world has not yet returned to the titanic geopolitical struggles of the twentieth century, but it is returning to the historical norm of great-power strife—with all the dangers that entails.

#### Litigation undermines US global influence.

Bookman ’15 [Pamela; May 2015; Academic Fellow, Columbia Law School; Stanford Law Review; "Litigation Isolationism," vol. 67, p. 1081-1144]

But litigation isolationism also has unappreciated effects on U.S. sovereign interests more broadly defined. As I have argued elsewhere, the combination of litigation isolationism at the front end with relatively liberal foreign-judgment enforcement rules at the back end can result in delegating to foreign courts the power to resolve disputes involving U.S. parties that Congress or the states intended to be covered by American law.3 12 Such delegation-regardless of whether enforcement of the judgment is later sought in the United States, but all the more so if it is-may undermine broader U.S. interests in several ways.

First, U.S. courts forgo the opportunity to apply American proceduresa nd the policies behind them to cases with strong U.S. ties. Whatever one's views on the goals of American procedure,' 3 those goals are rarely vindicated by dismissing cases and discouraging plaintiffs from filing in U.S. courts.

Second, in a situation where a U.S. court and a foreign court would reach different conclusions about which substantive law should apply to a given dispute, the United States, through avoidance doctrines, forgoes not only the power to decide the choice-of-law question, but also the opportunity to have its law applied. 3 14 This happened in the seminal forum non conveniens case of Piper Aircraft Co. v. Reyno. 3 15 The lower courts had determined that Pennsylvania law should apply but that Scotland would find that its own law applied . 16 The Supreme Court's decision to enforce the district court's forum non conveniens dismissal upset the previous understanding that forum non conveniens should not apply if choice-of-law analysis indicated that U.S. law would apply to the dispute.37 Today, choice-of-law analysis is typically conducted only after a case has survived a forum non conveniens motion to dismiss, but forum non conveniens dismissals are still disproportionately likely in suits where foreign law just might apply.3 18

Third, by pursuing litigation isolationism, U.S. courts are unilaterally deciding to limit the U.S. role in the emerging market for transnational litigation, a market in which the United States began as a principal player (although that, too, was primarily a judicially driven position). There are benefits to competing more actively in this market. Several countries have begun to recognize the economic value of exporting domestic law, particularly in the transnational commercial context. 31 The U.S. legal market and other parts of the economy currently gross substantial sums from transnational litigation. 320 American decisions still disproportionately influence world understandings of domestic and international law issues, although some argue that influence is diminishing. 321

Avoidance doctrines either ignore or do not value these benefits. Or perhaps they assume that transnational commercial litigation can be promoted at the same time that transnational tort litigation is shunned 32 2

This may have some positive effects from a global perspective. But it has negative effects not only on U.S. control over suits involving its own nationals and regulation of conduct and harms that occur within its territory, but also on U.S. global influence.323

#### That determines the influence of US law on global governance.

Whytock ’12 [Christopher; Winter 2012; Acting Professor of Law and Political Science, University of California, Irvine School of Law; St. John’s Journal of International & Comparative Law; “Transnational Judicial Governance,” vol. 2, p. 55-68]

Notwithstanding the differences between these different types of transnational litigation, in all three contexts one sees domestic courts performing a substantive global governance function: the determination of rights and obligations in ways that contribute to the authoritative allocation of resources among transnational actors.21 In this way, domestic courts help answer a second fundamental question of global governance: Who gets what?

B. The Transnational Shadow of the Law: Strategic Behavior and Other Forms of Global Governance

The global governance functions of domestic courts are important not only because of their impact on litigants, but also because of their influence beyond borders and beyond the parties to particular disputes.22 Extending Mnookin and Kornhauser’s concept, I call this the “transnational shadow of the law.”23

1. Transnational Judicial Governance and the Strategic Behavior of Transnational Actors

For example, domestic court decisions can affect the strategic behavior of transnational actors. Prior court decisions influence actors’ expectations about future court decisions. Because the strategic behavior of transnational actors often depends on their expectations about future domestic court decisions regarding their activity, domestic court decisions can influence that activity.24 For example, international choice-of-law decisions by domestic courts can influence transnational activity by helping transnational actors determine which state’s laws would be applied to their activity in the event of litigation—and, in the same way, these decisions can facilitate bargaining among transnational actors.25 Similarly, the personal jurisdiction and forum non conveniens decisions of a particular state’s domestic courts can influence forum shopping behavior by shaping litigants’ expectations about whether a suit would be able to proceed in that state.26

2. The Relationship Between Transnational Judicial Governance and Other Types of Global Governance

Of course, transnational judicial governance is only one possible method of global governance. But the transnational shadow of the law extends to other forms of governance. The most familiar (even if not the most pervasive) approach to global governance involves international institutions, such as international law (e.g. the law of the sea), international organizations (e.g. the United Nations), and international courts (e.g. the International Court of Justice).27

Another method of global governance consists of transgovernmental networks between the regulatory agencies of different states.28 Transgovernmental networks are “pattern[s] of regular and purposive relations among like government units working across . . . borders.”29 An example of a transgovernmental network is the active cooperative relationship between antitrust authorities in the United States and the European Union.30 Transnational judicial governance itself may sometimes take the form of transgovernmental networks, particularly at the highest levels of national judiciaries.31 However, it is likely that most domestic judges—especially the busy trial court judges on the front lines of transnational litigation—usually will have insufficient time and resources to actively participate in networks of regular and purposive relations with their foreign counterparts.32 Therefore, it is likely that most transnational judicial governance occurs outside the context of transgovernmental networks.

A third approach to global governance is private global governance, whereby private actors regulate transnational activity.33 For example, private actors play an important role in international standard setting,34 and private arbitral institutions offer dispute resolution services that are widely used by transnational actors.35

Even combined, these methods of global governance do not extend to all transnational activity. But activity to which these international, transgovernmental and private governance methods do not extend are not necessarily ungoverned. To the contrary, they may be governed by domestic law—and when this is the case, domestic courts, as explained above, can help determine which state’s domestic law governs.36 Even when one of these three methods of global governance do apply to particular transnational activity, they may overlap with domestic regulations—here, too, domestic courts can play a significant role by allocating authority along the domestic-international dimension or the private-public dimension.37 In these ways, domestic courts can help fill global governance gaps and resolve governance conflicts.

More fundamentally, these other methods of global governance depend significantly on domestic courts for their effectiveness.38 For example, domestic courts can support efforts to govern through international institutions by contributing to the development of international law;39 and they can support (or limit) those efforts by enforcing (or declining to enforce) international law and the judgments of international courts.40 Insofar as domestic courts are involved in the interpretation, application and review of the regulations and other decisions of government agencies that are part of transgovernmental networks, domestic courts can provide support for those networks. And domestic courts support private global governance by interpreting and enforcing transnational contracts.41 In particular, they provide critical support for the transnational commercial arbitration system by enforcing arbitration agreements and arbitral awards. 42 Of course, these alternative forms of governance do not rely entirely or necessarily even primarily on domestic courts. But domestic courts can enhance the effectiveness of these alternative methods by providing support, and can sometimes hinder them by withholding support.

In summary, the effects of domestic court decisions in transnational litigation radiate beyond borders and beyond the parties to particular lawsuits.43 Domestic courts not only influence the strategic behavior of transnational actors, but also provide support for other methods of global governance, including international institutions, transgovernmental networks, and private governance.

II. INCREASING MULTIPOLARITY IN TRANSNATIONAL JUDICIAL GOVERNANCE?

What is the role of the United States in transnational judicial governance? The conventional wisdom is that, for a variety of reasons, the United States is the leading provider of courts and law for transnational disputes, perhaps along with England. Thus, the general impression seems to be that the transnational litigation system is unipolar, or perhaps bipolar. This would imply that the United States is among the most influential participants in transnational judicial governance.

But several empirical trends seem to indicate that other countries are playing an increasingly influential role in the transnational litigation system. These trends suggest that compared to other states, the influence of the United States in transnational judicial governance may be declining.

First, according to data collected by the Administrative Office of the U.S. Courts, alienage litigation—that is, transnational litigation over which federal subject matter jurisdiction exists because the suit is between a U.S. citizen and a foreign citizen—is declining.44 Transnational tort claims are declining, which would seem to suggest less ex post forum shopping into U.S. courts by plaintiffs;45 and transnational contract claims are likewise declining, which would seem to suggest fewer ex ante forum selection clauses favoring U.S. courts.46 The U.S. Supreme Court’s recent decision in J.M. McIntyre Machinery, Ltd. v. Nicastro47—which rejected personal jurisdiction in a suit by a U.S. plaintiff against a foreign defendant for an injury caused in New Jersey by a machine manufactured by the defendant48—suggests that this trend will continue.

#### The impact is a Chinese-led global order.

Schuman ’21 [Michael; 12/9/21; Nonresident senior fellow at the Atlantic Council’s Global China Hub; The Atlantic; “https://www.theatlantic.com/international/archive/2021/12/china-wants-rule-world-controlling-rules/620890/]

To truly understand the contours of the growing competition between the United States and China, look beyond the corridors of power in Washington and Beijing, past the tensions in the waters and skies around Taiwan, away from the bellicose rhetoric at international forums, and even off the tennis court, the new front opened by the trauma of Peng Shuai. Instead, look to the courtroom.

In the U.S. and much of the liberal West, the concept of the “rule of law” is vital to a properly functioning society—the idea (at least in theory) that the law is impartial, independent, and applied evenly and consistently to all, and that it serves to protect the innocent, including from the state. China’s leaders, however, follow the concept of the “rule by law,” in which the legal system is a tool used to assure Communist Party dominance; courts are forums for imposing the government’s will. The state can do just about anything it wants, and then find some helpful language in the “laws” to justify it.

To see these differing perspectives in action, consider the case of Meng Wanzhou, the chief financial officer of the Chinese telecom giant Huawei Technologies, who was arrested in Vancouver in late 2018 on behalf of the U.S. Justice Department, which indicted her for bank fraud. From the American point of view, the case was a matter of law enforcement: The Justice Department accused Meng of lying to a major international bank about Huawei’s business in Iran, causing financial transactions that violated Washington’s sanctions on that country. Prosecutors were vindicated when Meng confirmed the substance of the case in an agreement reached in September that allowed her to avoid a U.S. trial and return to China.

In Beijing, however, the case was never perceived as anything but political. China’s Foreign Ministry deemed Meng’s indictment “a political frame-up … designed to hobble Chinese high-tech.” Thus for Beijing, the case demanded a political solution. In July, when U.S. Deputy Secretary of State Wendy Sherman met with her Chinese counterparts, they handed her two lists of demands that included dropping the case against Meng. Her eventual release was heralded within China as a diplomatic triumph. (Huawei, in a comment attributed to Meng’s lawyer, William W. Taylor, noted that she did not plead guilty, and asserted that “we fully expect the indictment will be dismissed.”)

In a narrow sense, the episode illustrates rival superpowers seeking to pressure each other, just one part of a wider global conflagration. Yet this view misses the larger lesson of the case. Meng’s arrest and subsequent release point to something far deeper and longer-lasting, with the potential to reshape how the modern world works.

For 75 years, the United States has been the world’s self-anointed rule writer and enforcer. Intent on preventing another global bloodletting on the scale of World War II, Washington attempted to craft a world order cemented in shared norms, with international institutions to enshrine and uphold them. Backing it all up was the might of the American military. That order has been imperfect, subject to abuse by an array of countries—America included—but it has kept a lid on big-power conflict, while spreading economic prosperity and democratic principles across much of the globe. It’s an order that, though somewhat tattered, the Biden administration is striving to maintain with, for instance, today’s Summit for Democracy.

But the American monopoly on rule writing is now facing its stiffest challenge since the fall of the Soviet Union. As China rises in stature, Beijing is promoting its own concepts about global governance, development, and international relations, grasping influence at institutions such as the United Nations to infuse these concepts into global discourse, and using its growing wealth and military might to contest the existing norms of the American world system.

Ultimately, this is what the Meng dispute is really about: a widening confrontation between the U.S. and China over who sets the rules on trade and technology, climate change, and public health. Fundamentally, it is about the principles and precepts that guide how countries, companies, and individuals interact on a global scale, a competition over whether the world will be one of the “rule of law” or the “rule by law.”

The main purpose of the West’s original policy of engagement with China was to avoid this very situation. By integrating Beijing into the U.S.-led system, the thinking went, the Chinese leadership would see its benefits and come to support it. On a certain level, the plan succeeded. China has been a major beneficiary of the American order—perhaps the biggest of all. The security, trade, and cross-border investment fostered by the U.S. order propelled China’s rise from poverty, while Beijing eagerly immersed itself in U.S.-backed institutions such as the World Trade Organization.

Yet today, China’s paramount leader, Xi Jinping, appears to consider the U.S. system a constraint on Chinese power. For a proud autocracy, the American order can seem an unfriendly, even threatening place, one where liberal political values reign supreme, and the Chinese form of government is perceived as illegitimate, while Chinese companies and officials are vulnerable to foreign sanction and Chinese ambitions are hemmed in. From Xi’s perspective, it is critical that Beijing rewrite the rules to better suit its interests and, more broadly, those of authoritarian states. Simply, Xi intends to flip the global hierarchy, placing illiberal governments and ideals at its apex.

Xi “wants to dominate the rule of law,” Jerome Cohen, a longtime expert in Chinese law, told me. Xi believes that “you have to have rules that suit the interest of the majority of countries,” and “he sees the Anglo-Americans as being a minority now,” Cohen continued. “That minority should be governed by the autocracies of the world who are amenable to the Chinese point of view.”

The U.S. has faced a similar challenge before, from the Soviet Union during the Cold War. But because China is more integrated into the American order, especially economically, than the Soviets ever were, it presents a more dangerous threat. Beijing is attacking the world order in a pincer movement. From the outside, it markets its ideas, governance, and development model as superior to the West’s; from the inside, it works within the very institutions and networks that bind the U.S. order together.

Take, for instance, the Belt and Road Initiative, Xi’s pet program that finances and builds railways, power stations, and other infrastructure in developing nations. This undertaking is an effort to change the way international development is done by offering an alternative to the established practices of the Western powers and their institutions, such as the World Bank. Beijing’s state banks generally don’t follow the norms on lending to poor nations designed (after much trial and error) by other major creditor countries, nor has China participated in processes to manage that debt, such as the Paris Club. Instead, Chinese lending is based on China’s rules, often with less transparent terms and weaker standards on labor practices, corruption, and environmental protection. Kristen Cordell, a development policy expert, wrote in a 2020 report on Belt and Road that “the willingness of China to abide by international rules and processes for these investments has been secondary to its interest of shaping norms for its favor.”

Meanwhile, China’s inroads at the United Nations show how the country is eating away at the American order from its very core. Beijing is using its influence to promote Belt and Road. It also employs its growing clout to infuse the institution with its own ideological principles on issues such as human rights and state sovereignty. Last year, at the UN’s Human Rights Council, 53 countries sided with China on its controversial imposition of a national-security law on Hong Kong, which allowed authorities to crack down on the city’s prodemocracy movement; at this year’s UN General Assembly, more than 60 members trumpeted China’s position on human rights—essentially, that a nation’s rights violations are none of the world’s business. Taken together, these efforts, a 2019 report by the Center for a New American Security contended, “will hasten the export of some of the most harmful aspects of China’s political system, including corruption, mass surveillance, and the repression of individual and collective rights.”

Elsewhere, Beijing has ignored an international ruling and the protestations of its neighbors over its expansion in the South China Sea, a vital waterway for global trade that it claims is mostly China’s sovereign territory. There, Beijing is effectively attempting to rewrite the standard norms on territorial waters and free navigation, basing its position on China’s purported historical role in the area going back more than 2,000 years to the Han dynasty, and other dubious assertions. To solidify its grip, China has also utilized bullying and threats: Its coast guard harasses other nations’ ships, and its fishing vessels crowd into waters other governments contend they have the right to exploit. Beijing also built man-made islands in the region and stacked them with military installations. The nations that share the South China Sea, all smaller and in some cases poorer, have struggled to hold their own.

And then there is the Meng case. She was ostensibly a private citizen working for an ostensibly private company, but China used the full might of its government apparatus to defend her. Along with raising her case in the meeting with Deputy Secretary of State Sherman and through other channels, Beijing also held two Canadian citizens, the former diplomat Michael Kovrig and the businessman Michael Spavor, who were arrested in China only days after Meng was detained in Canada. The move was widely seen as an attempt to pressure authorities in Ottawa to intervene and short-circuit the extradition process, and the differing treatment of Meng and “the two Michaels” illustrates the gulf in the differing perceptions of the rule of law between the U.S. (and other democracies) and China. While Meng defended herself in public hearings, Kovrig and Spavor faced undefined spying charges in closed-door trials. As the process dragged on, the pair rotted in Chinese prisons while Meng cooled her heels in a Vancouver mansion and indulged in fancy dinners and lavish shopping sprees.

Beijing authorities pretended the affairs weren’t connected, but the truth that the two Canadians were no more than human bargaining chips was laid bare when the pair were immediately released upon Meng’s settlement with the Justice Department. In a postmortem of the affair, Scott Kennedy, senior adviser at the Center for Strategic and International Studies, wrote that “Beijing’s actions reconfirmed the international community’s conclusion that China has no regard for rule of law.”

What xi’s world order might look like isn’t clear. He hasn’t elucidated a complete vision for a replacement system. On the surface, the language he proffers to describe the workings of a new order sounds innocuous enough. He talks of a “community of common destiny,” with diplomacy based on “win-win cooperation” and “mutual respect,” in which different social and political systems are accepted. But this is code for a downgrading of democracy. Unlike the current order, in which liberal democracy is held up as the sole legitimate form of governance, Xi’s version would raise authoritarianism to equal, or even superior, status. This would likely result in a world where Washington and its allies can’t decide which states deserve to be sanctioned for the global good, as they define it, one where Chinese executives such as Meng cannot end up in foreign courtrooms for allegedly violating the law. Such a system would suit Beijing’s preference to do business with anybody who wants to buy and trade.

Xi wants to usurp the U.S. role as arbiter of global rights and wrongs, based on an entirely different set of criteria, such as who does and does not support Chinese interests and power. Beijing regularly imposes sanctions of its own on countries it views as a threat to its interests. Australia, for example, has faced severe economic coercion, including effective bans on key exports, for supporting an independent investigation into the origins of the coronavirus pandemic, which Beijing considers an attempt to undermine Communist rule. When Lithuania recently cozied up toTaiwan, Beijing downgraded its diplomatic relations and blocked imports from the country.

“It’s really about replacing a rule-of-law, equality-between-states system with a hierarchical sensibility that privileges authoritarianism,” Matt Pottinger, chair of the China program at the Foundation for Defense of Democracies and deputy national security adviser in the Trump administration, told me. If Beijing succeeds, he added, “the international order would be far more Machiavellian, and the UN system would reward the most Mafia-like players.”

That’s bad enough for the U.S., but it’s downright dangerous for countries that aren’t superpowers—which means most of them. These countries seek protection in a rules-based order, one where they can (at least in theory) stand up to bullying from more powerful states by utilizing the rule of law. One reason the government of Australia has taken a hard line on aspects of Chinese foreign policy is its commitment to defending the current order. Former Australian Prime Minister Malcolm Turnbull wrote last year that “it was manifestly in our interests to maintain respect for the rule of law in our region because that was the only way we, and other smaller states, could be sure of preserving our own freedom and sovereignty.”

#### Extinction.

Wang ’19 [Fei-Ling; October 24; Professor at the Sam Nunn School of International Affairs, Ph.D. from the University of Pennsylvania; The Cipher Brief, “The China Order: A Challenge for the U.S. and the World,” <https://www.thecipherbrief.com/column_article/the-china-order-a-challenge-for-the-u-s-and-the-world>]

It is no longer hard to see that the rising power and the mounting pugnaciousness of the People’s Republic of China (PRC) have become a comprehensive challenge for the United States. China’s Machiavellian policies and actions at home and abroad have turned an otherwise naturally complementary Sino-American economic relationship into a near zero-sum, if not already a zero-sum, competition for market, jobs, technology, and financial primacy. Beijing now openly flexes its new muscles in its neighborhood and beyond to resist, reduce, and replace American leadership and presence everywhere possible, seeking to undermine the U.S.-led international economic order and American-anchored collective security arrangements. The PRC has been burning billions, for example, hoping to replace the U.S. dollar with the over-printed Chinese Renminbi (RMB). Extraordinarily heavy extraction of its own economy, the world’s second largest, and its enormous foreign currency reserve resulting from the gross imbalance in U.S.-China trade have enabled the PRC to massively expand its military. That military is already the world’s second largest; its navy, for example, is projected to soon surpass the U.S. Navy in fleet tonnage. At the same time, massive but opaque spending sprees has allowed the PRC to actively procure power and proxies even inside the United States, positioning Beijing to reshape international opinions and norms more easily than ever.

What is less known, perhaps, is that the rising PRC state also seeks an overhaul of the very world order that has enabled the greatest advances of human civilization over the past few centuries – the Westphalian system of nation-states. This world order was codified in the 17th century, expanded to a global scale in the 20th century, and now is in its post-World War II and post-Cold War iteration — the so-called America-led Liberal International Order (LIO). The rise of Chinese power, under the autocracy of the Chinese Communist Party (CCP), is not just contesting U.S. national security and American global leadership but also the existing world order. Never since the heyday of the Cold War has the world seen such a full challenge to the United States and to the Westphalian system.

The CCP is leading the PRC toward a Chinese Dream of a world order in its own image, which I call the China Order. The China Order is a millennia-old political tradition and ideology that mandates a unitary, authoritarian (often totalitarian), omnipotent and omnipresent government for the whole known world. This alternative world order has had a variety of euphemisms in the long history of China: from tinaxia yitong (unification of all under heaven) and shijie datong (world’s grand harmony) in the imperial past, to Mao Zedong’s world solidarity for Communist revolution only forty years ago, to now Xi Jinping’s community of common human destiny. The China Order has powerfully revived to guide rising PRC power, under the banner of a Chinese version of globalization, ingeniously taking advantage of the various calls in our time for global governance to address transnational issues such as climate change, inequality, epidemics, and terrorism.

This China Order is normatively and practically at fundamental odds with the LIO version of the Westphalia system that enshrines comparison and competition among nations coexisting with equal sovereignty. The China Order has been widely addictive to the powerful and ambitious in history, whether they have been ethnically Han or not. It has been highly effective in practice, in great part because it became deeply legitimized and internalized in elite Chinese culture over many centuries. The China Order is now the sole acceptable model of the world under the authoritarianism known as the Qin-Han polity that the PRC now practices. But under this world order, as documented by The China Order (#ad), human civilization is socio-economically very suboptimal and hopelessly stagnant, inevitably shortchanging the lives of just about everyone, especially nonelites, as the tragic and often catastrophic history of Eastern Eurasia under the China Order before the nineteenth century amply demonstrates.

Since 1949, when the PRC restored traditional Chinese autocracy under the guise of imported Marxism-Leninism, the CCP has been ceaselessly and callously fighting its own people internally and the United States and American allies externally to preserve its monopoly over power. Only sheer exhaustion and near collapse could force the CCP to slow down and retreat, at home and abroad. External powers have influenced and facilitated the rise of PRC power, but have so far failed to transform the Qin-Han autocracy and its China Order ideal, thus remaining unable to change Beijing’s world views and global pursuits. Various, often false, rationalizations have justified the continuation of American/Western engagement with the PRC, which has greatly enriched and enabled the CCP to persist in its consolidation of power. Beijing’s push for power is nothing personal; it is a brand of authoritarianism just happens to be anchored in the remarkably persistent belief that failing to achieve control over the whole known world would spell the loss of the “mandate of heaven” and political extinction. Thus, the CCP is driven (or doomed) to methodically and opportunistically seek ever greater influence.

The rise of China, or more precisely the ever-greater power of the PRC state, represents a shift of the distribution and concentration of power in the international system (conceptually known as power transition) and an effort to reorder the units in the system and change the system’s governing norms. Chinese leaders have already openly claimed that they are now moving to the center of the world stage, leading a revolutionary change in the world order, upending the Peace of Westphalia established “four hundred years ago,” in the words of PRC leaders This points to a systemic change of world politics and a choice for all of us at the grandest possible scale: a scale that could reshape nations and redirect the path of human civilization. The PRC’s challenge is therefore greater than the struggle between the two European ideologies of Capitalism and Communism. The confrontation between the U.S.-led LIO and the PRC-dreamed China Order transcends these often vaguely defined civilizational clashes.

If the PRC challenge, the rise of an unscrupulous, ever more resourceful and determined PRC state, is not managed well and promptly, the United States will have to face a much worse choice in the not too distant future between tragic capitulation and a desperate war for its national security and world leadership and for the way in which humankind is organized worldwide. In the age of many kinds of weapons of mass destruction, this will be a harrowing decision.

Of course, one may argue that the grandiose China Dream of a China Order may be just another pretentious way for the CCP to invoke traditional, nationalist, and populist ideals to justify its autocratic governance of the Chinese people forever, similar to the splendid slogans and missions fabricated by many other dictators. Perhaps the highly insecure CCP leadership is fighting for its survival, not world domination. However, words have consequences. Propaganda and dilution often greatly mesmerize and mislead the pretenders themselves. More importantly, the CCP has been steadily following up its words with action and money for years (basically nonstop since 1949); it has just pledged over 10 times the total sum of the Marshall Plan (in today’s dollars) for its Belt and Road Initiative alone, for instance.

As the logic of the China Order dictates, the rising Chinese power will not stop short of unseating the United States and reordering the world, unless Beijing’s Qin-Han polity is transformed and/or the ever richer and more powerful PRC is checked. The alternatives, American capitulation or world war, are horrific to contemplate, but not necessarily impossible. Unlike in Hollywood, the “good” guys do not always win necessarily in the real world. A mighty autocracy that tightly controls one-fifth of humankind, willfully spends a disproportionately larger portion of the fruits of the world’s second largest economy, and vows (even if only hypocritically) to reform and reorder the world under its leadership, is and will always be a mortal challenge to the national security of the United States. America’s global position and way of life, world peace, and the overall world order all rest on how the PRC challenge is managed—soon.

#### Empagran seizes and aggregates judicial power. The plan respects both statutory text and international law.

Gardner ‘16 [Maggie; 10/22/16; Climenko Fellow and Lecturer on Law, Harvard Law School; Virginia Law Review; “RJR Nabisco and the Runaway Canon,” vol. 102. https://www.virginialawreview.org/articles/rjr-nabisco-and-runaway-canon/]

Second, judges should be wary of repeating the majority’s vague functional concerns about foreign relations. At the outset of its analysis of § 1964(c), the RJR Nabisco majority seemed to suggest that the presumption should be applied more rigorously when there is a danger of “international friction” or “risk of conflict” with foreign law.[71] This passage was largely rhetorical—a calling out of the seemingly inconsistent positions of European governments in this and other cases involving the presumption against extraterritoriality[72] (a point to which we will return[73]). Whatever its purpose, that language risks a dangerous ratcheting up of an already strict presumption. To the extent the general concern is legitimate—that courts should try to promote international comity by avoiding controversy—that concern is already embodied in the presumption itself, which is meant to help prevent unintentional discord with other nations.[74] There is no need to apply the presumption more rigorously when comity is at stake, as the presumption assumes comity is always at stake when U.S. law applies outside of U.S. territory.

Besides which, friction and comity cut both ways: Worse international discord might be caused by denying foreign plaintiffs remedies for the wrongdoing of U.S. nationals, including on U.S. territory, while at the same time allowing U.S. plaintiffs to sue foreign defendants for comparable conduct.[75] As Justice Ginsburg explained in dissent, “[m]aking such litigation available to domestic but not foreign plaintiffs is hardly solicitous of international comity or respectful of foreign interests.”[76] Rather, the better place to address specific comity concerns is in the post-presumption analysis.

B. What Happens Next

In applying the presumption, then, judges should not be afraid to find it is rebutted. While the Supreme Court has not clarified what the post-presumption analysis should look like,[77] the landscape on the other side of the presumption is not quite as messy as it might at first appear. Here are four guideposts for managing that analysis.

First, a point about semantics. The Court suggested in Microsoft Corp. v. AT&T Corp. that the presumption against extraterritoriality continues to apply even when a statute is explicitly extraterritorial; in that instance, the Court said, the presumption “remains instructive in determining the extent of the statutory exception.”[78] This is a question of labels, and saying a presumption applies after it has been rebutted will only sow confusion. Rather, the Court’s analysis in Microsoft turned on F. Hoffman-La Roche Ltd. v. Empagran, S.A.,[79] a case that did not discuss the presumption against extraterritoriality as such. Both Microsoft and Empagran are really cases about how to interpret statutes that rebut the presumption, and the language used to identify that analysis should signal as much.

Which brings us to a second point: The post-presumption analysis is still a question of statutory interpretation.[80] The Court in RJR Nabisco helpfully clarified that a statute’s “focus,” invoked at step two of the Morrison framework, is irrelevant to interpreting the scope of an extraterritorial law.[81] Instead, the relevant canon post-presumption is the Charming Betsy canon,[82] or the assumption that Congress does not legislate beyond the bounds of international law. Under international law, there are generally accepted limits on a nation’s prescriptive (or law-making) power. Most traditionally, countries can assert prescriptive jurisdiction over their nationals, their territory, and ships flying their flag; countries may also legislate regarding harm to their nationals or threats to their security; and all countries can legislate regarding a set of universal crimes.[83] When a particular interpretation of an extraterritorial statute would exceed these bases of jurisdiction under international law, judges should presume that was not Congress’s intent absent a clear statement.

The third point is that this rather clear outer limit from Charming Betsy—when combined with other doctrines like personal jurisdiction that help define the scope of transnational litigation in U.S. courts—will adequately help judges resolve most cases. Cases involving the extraterritorial application of federal statutes will often fall comfortably within the core jurisdictional zones of U.S. power. When cases stretch those limits, Charming Betsy provides a hard stop. Meanwhile, other doctrines can also help address comity concerns;[84] indeed, some of these doctrines have themselves been refined in recent years to better account for international comity.[85] As emphasized by Justice Ginsburg in her RJR Nabisco dissent, for example, the recent contraction of general jurisdiction will limit the risk that foreign defendants with thin ties to the United States can be hauled before U.S. courts.[86] Between those constitutional due process limits and international limits on prescriptive jurisdiction (as filtered through the Charming Betsy canon), there should be few cases that raise otherwise unaddressed comity concerns.

But what should judges do if confronted with one of those few remaining cases? This brings us to the fourth point, which is also the most speculative. One could read the Court’s opinions in Empagran and Microsoft as suggesting that an additional, Charming Betsy-inflected inquiry might apply to these zones of jurisdictional conflict.[87] The limits under international law are not always clear-cut, and the closer one approaches to those limits, the more likely one will cause consternation among nations whose core jurisdictional prerogatives—such as their own territorial jurisdiction—are affected.[88] This gray zone at the edge of permissible exercises of jurisdiction was the source of the Court’s unease in Empagran and Microsoft.

In Empagran, for example, the Court had to determine whether a provision of the Sherman Act (which is explicitly extraterritorial) extended to foreign injuries caused primarily by the foreign conduct of foreign actors that also (but separately) caused domestic injuries.[89] In holding that it did not, the Court asserted that it “ordinarily construes ambiguous statutes to avoid unreasonable interference with the sovereign authority of other nations,” and it suggested there is a “rule of statutory construction” that “cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws.”[90] Though this formulation is unhelpfully vague, the Court was groping for a way to put some softer outer limits on U.S. law (as its reference to the Charming Betsy canon suggests).[91] The idea is that, even without a direct conflict with international law (which could only be overcome by a clear statement of Congress), judges should still be wary of interpreting statutes as reaching right up to those outer limits because doing so can infringe on the widely recognized sovereign interests of other states.

When it comes to effectuating this idea, however, Empagran did not provide a workable framework. As the Empagran Court seemed to recognize, this should not be an open-ended balancing or a vague standard that allows functional concerns (like the risk of “international friction”) to balloon over time.[92] Indeed, the malleability of such generalized functional concerns has led the Court to curtail their relevance in other foreign relations doctrines, like the act of state doctrine[93] and the political question doctrine.[94] Under those doctrines, judges’ protestations about their incompetence in foreign affairs had led not to greater deference to the political branches, but to the growth of judicial power as judges too readily decided not to decide cases.[95] Similarly here, broadly phrased concerns about “unreasonable interference with the sovereign authority of other nations”[96] could encourage judges to back too quickly away from cases that Congress (and those other nations) would really rather they keep.

Rather, the inquiry should still be tied to methods of statutory interpretation: When the case for the exercise of U.S. prescriptive jurisdiction under international law becomes attenuated, then judges should look more searchingly for clues that Congress did, indeed, mean to legislate that far.[97] That is, functional concerns justify the inquiry but do not themselves resolve it. And if congressional intent for a statute to apply in a particular context is clear, functional concerns should not override that application.[98] In addition, this inquiry should be treated as a rare exception to an otherwise strong default. Once a judge has determined that Congress intended a statute to apply extraterritorially, she should assume it does apply extraterritorially, at least up to the limits of international law. Many cases will fall squarely in this zone, without implicating the gray space at the edges where the thinness of U.S. jurisdictional ties in fact generate friction and controversy.[99]

This is the difference between Morrison, Empagran, and Kiobel v. Royal Dutch Petroleum Co., where foreign allies intervened to voice concerns about the reach of U.S. laws, and RJR Nabisco, where they themselves invoked the U.S. law. The former cases were “foreign-cubed,” involving foreign plaintiffs, foreign defendants, and foreign harms; the reach of U.S. prescriptive jurisdiction under international law in those cases was at its lowest ebb. In RJR Nabisco, in contrast, “[a]ll defendants are U.S. corporations, headquartered in the United States, charged with a pattern of racketeering activity directed and managed from the United States, involving conduct occurring in the United States.”[100] As Justice Ginsburg summed up, “this case has the United States written all over it.”[101] The difference in foreign reaction across these cases was not hypocritical, as the majority delighted in suggesting.[102] Rather, the reason why RJR Nabisco did not raise international comity concerns was not because the plaintiffs were the foreign governments themselves, but because the defendants were U.S. citizens operating on U.S. territory.[103] In such a case involving traditional and strong bases for exercising prescriptive jurisdiction under international law, judges should not shy away from applying extraterritorial laws as Congress has written them.

The precise contours of this task of statutory interpretation in the gray zone of jurisdictional conflict, however, still requires refinement. Courts and commentators have tried and largely discarded the Restatement (Third) of Foreign Relations Law’s reasonableness balancing test, and Empagran has rarely been invoked outside the antitrust context. Besides which, the search for congressional intent regarding jurisdictional conflict might be quixotic, as Congress may well never have thought about the jurisdictional configurations at issue. The solution to that remaining uncertainty, however, is not avoidance, but engagement and reasoned elaboration.[104]

Conclusion

The real challenge in RJR Nabisco was not the hunt for congressional intent—which was not that hard to find—but the fact that RICO itself is overbroad. I am not unsympathetic to the majority’s concern that extraterritorial application of RICO, just like territorial application of RICO, could sweep too broadly. But unilateral judicial corrections for unwise legislation raises more concerns than it resolves. What Congress needs, if not a faithful agent, is a faithful partner in managing jurisdictional conflict in a globalized economy. It may now fall to the lower courts to step into that partnership and nudge the presumption back towards home.

# 2AC – NDT Doubles

### Impact – Developing Economies

#### Our development reps will not ‘cause’ anything.

Goddard and Krebs 15 (Stacie E. and Ronald R., Goddard, Jane Bishop Associate Professor of Political Science at Wellesley College; Krebs, Beverly and Richard Fink Professor in the Liberal Arts and Associate Professor of Political Science at the University of Minnesota, “Securitization Forum: The Transatlantic Divide: Why Securitization Has Not Secured a Place in American IR, Why It Should, and How It Can,” Duck of Minerva, 9-18-2015, http://duckofminerva.com/2015/09/securitization-forum-the-transatlantic-divide-why-securitization-has-not-secured-a-place-in-american-ir-why-it-should-and-how-it-can.html)

Securitization theory has rightly garnered much attention among European scholars of international relations. Its basic claims are powerful: that security threats are not given, but require active construction; that the boundaries of “security” are malleable; that the declaration that a certain problem lies within the realm of security is itself a productive political act; and that “security” issues hold a trump card, demanding disproportionate resources and silencing alternative perspectives. Securitization thus highlights a familiar, even ubiquitous, political process that had received little attention in the international relations or comparative foreign policy literatures. It gave scholars a theoretical language, if not quite a set of coherent theoretical tools, with which to make sense of how a diverse set of issues, from migration to narcotics flows to global climate change, sometimes came to be treated as matters of national and global security and thereby---and this is where securitization’s critical edge came to the fore---impeded reasoned political debate. No surprise that, as Jarrod and Eric observe, securitization has been the focus of so many articles in the EJIR---and even more in such journals as the Review of International Studies and Security Dialogue. But there are (good) substantive and (not so good) sociological reasons that securitization has failed to gain traction in North America. First, and most important, securitization describes a process but leaves us well short of (a) a fully specified causal theory that (b) takes proper account of the politics of rhetorical contestation. According to the foundational theorists of the Copenhagen School, actors, usually elites, transform the social order from one of normal, everyday politics into a Schmittian world of crisis by identifying a dire threat to the political community. They conceive of this “securitizing move” in linguistic terms, as a speech act. As Ole Waever (1995: 55) argues, “By saying it [security], something is done (as in betting, a promise, naming a ship). . . . [T]he word ‘security’ is the act . . .” [emphasis added]. Securitization is a powerful discursive process that constitutes social reality. Countless articles and books have traced this process, and its consequences, in particular policy domains. Securitization presents itself as a causal account. But its mechanisms remain obscure, as do the conditions under which it operates. Why is speaking security so powerful? How do mere words twist and transform the social order? Does the invocation of security prompt a visceral emotional response? Are speech acts persuasive, by using well-known tropes to convince audiences that they must seek protection? Or does securitization operate through the politics of rhetorical coercion, silencing potential opponents? In securitization accounts, speech acts often seem to be magical incantations that upend normal politics through pathways shrouded in mystery. Equally unclear is why some securitizing moves resonate, while others [are ignored] ~~fall on deaf ears~~. Certainly not all attempts to construct threats succeed, and this is true of both traditional military concerns as well as “new” security issues. Both neoconservatives and structural realists in the United States have long insisted that conflict with China is inevitable, yet China has over the last 25 years been more opportunity than threat in US political discourse---despite these vigorous and persistent securitizing moves. In very recent years, the balance has shifted, and the China threat has started to catch on: linguistic processes alone cannot account for this change. The US military has repeatedly declared that global climate change has profound implications for national security---but that has hardly cast aside climate change deniers, many of whom are ironically foreign policy hawks supposedly deferential to the uniformed military. Authoritative speakers have varied in the efficacy of their securitizing moves. While George W. Bush powerfully framed the events of 9/11 as a global war against American values, Franklin Delano Roosevelt, a more gifted orator, struggled to convince a skeptical public that Germany presented an imminent threat to the United States. After thirty years as an active research program, securitization theory has hardly begun to offer acceptable answers to these questions. Brief references to “facilitating conditions” won’t cut it. You don’t have to subscribe to a covering-law conception of theory to find these questions important or to find securitization’s answers unsatisfying. A large part of the problem, we believe, lies in securitization’s silence on the politics of security. Its foundations in speech act theory have yielded an oddly apolitical theoretical framework. In its seminal formulation, the Copenhagen school emphasized the internal linguistic rules that must be followed for a speech act to be recognized as competent. Yet as Thierry Balzacq argues, by treating securitization as a purely rule-driven process, the Copenhagen school ignores the politics of securitization, reducing “security to a conventional procedure such as marriage or betting in which the ‘felicity circumstances’ (conditions of success) must fully prevail for the act to go through” (2005:172). Absent from this picture are fierce rhetorical battles, where coalitions counter securitizing moves with their own appeals that strike more or less deeply at underlying narratives. Absent as well are the public intellectuals and media, who question and critique securitizing moves sometimes (and not others), sometimes to good effect (and sometimes with little impact). The audience itself---whether the mass public or a narrower elite stratum---is stripped of all agency. Speaking security, even when the performance is competent, does not sweep this politics away. Only by delving into this politics can we shed light on the mysteries of securitization. We see rhetorical politics as constituted less by singular “securitizing moves” than by “contentious conversation”---to use Charles Tilly’s phrase. To this end, we would urge securitization theorists, as we recently have elsewhere, to move towards a “pragmatic” model that rests on four analytical wagers: that actors are both strategic and social; that legitimation works by imparting meaning to political action; that legitimation is laced through with contestation; and that the power of language emerges through contentious dialogue. We are heartened that our ambivalence about securitization---the ways in which we find it by turns appealing and dissatisfying---and our vision for how to move forward have in the last decade been echoed by (mostly) European colleagues. These critics have laid out a research agenda that would, if taken up, produce more satisfying, and more deeply political, theoretical accounts. In our own work, both individual and collective, we have tried to advance that research agenda. So long as securitization theorists resist defining the theory’s scope and mechanisms, and so long as it remains wedded to apolitical underpinnings, we think it unlikely to gain a broad following on this side of the pond. Second, securitization has been held back by another way in which it is apolitical---this time thanks to its Schmittian commitments and political vision. Successful securitization, in seminal accounts, replaces normal patterns of politics with the world of the exception, in which contest has no place. They imagine security as the ultimate trump card. But, in reality, the divide is not nearly so stark. Security does not crowd out all other spending priorities---or states would spend on nothing but defense and “securitized” issues. Nor does simply declaring something a matter of national security guarantee its funding---or global climate change counter-measures, including research on renewable energies, would be well-funded. Nor are security issues somehow aloof from politics: politics has never truly stopped “at the water’s edge.” Securitization considers only the politics of security. Its strangely dichotomous optic cannot see or make sense of the politics within security. In ignoring the politics within security, securitization is of course in good company. Realists of all stripes have paid little attention to domestic political contest, except as a distraction from structural imperatives. But while realism is unquestionably a powerful first-cut, this inattention to the politics within security is also among the reasons so many have found it wanting. As Arnold Wolfers long ago observed, some degree of insecurity is the normal state of affairs. But “some may find the danger to which they are exposed entirely normal and in line with their modest security expectations while others consider it unbearable to live with these same dangers.” And states, he further argues, do not actually maximize security---almost ever. “Even when there has been no question that armaments would mean more security, the cost in taxes, the reduction in social benefits, or the sheer discomfort involved have militated effectively against further effort” (1962:151, 153). A securitization perspective renders all this politics within security inexplicable. And yet, as Wolfers saw half a century ago, it is crucial.

#### Our reps did not ‘justify’ anything but saying bad things will happen is good.

Robert Wuthnow 10, Gerhard Andlinger Prof of Sociology at Princeton, PhD in Sociology from Cal Berkeley, “Be Very Afraid: The Cultural Response to Terror, Pandemics, Environmental Devastation, Nuclear Annihilation, and Other Threats,” p. 21, google books

The notable feature of the perilous times that humanity has faced over the past half century is that the response has made them seem manageable enough that we roll up our collective sleeves and work on practical solutions. There have been relatively few panics involving spontaneous outbreaks of irrational behavior. Work, family life, and other routine activities have continued. Individuals have sometimes shouldered the small tasks of learning about impending crises and pitching in to support research or protect their families. These responsibilities, though, have seldom required great sacrifices on the part of large populations, at least not in the Western world. Social movements have emerged and policies have been affected, but regimes have rarely been toppled as a result. None of this can be understood simply as denial. Were denial the correct interpretation, billions would not have been spent on weapons, deterrence programs, research, and communication. Millions of readers and television viewers would not have paid attention to warnings and documentaries. People responded, but in ways that incorporated the problem solving into ordinary roles and competencies. Nor can the normality of the response be explained by arguing that the dangers envisioned generated little upheaval because they never happened. A nuclear holocaust did not occur, but enough destruction did take place that people could imagine the results. There were also chemical spills, accidents at nuclear plants, terrorist attacks, and natural disasters. Enough went wrong, even with well-intentioned planning, that danger could not be ignored. Indeed, it is truly surprising that more chaos, more panic, more soul searching, and more enervating fear did not ensue.

#### *Empagran* enables western corporations to exploit developing countries with impunity – plan solves.

Michaels ’11 [Ralf Michaels; 2011; Professor of Law, Duke University School of Law; International Law in the U.S. Supreme Court; “Empagran's Empire: International Law and Statutory Interpretation in the U.S. Supreme Court of the Twenty-First Century,” Part V, Section D. p. 533-546]

A problem remains. The idea of decentralized regulation – each regulates its own markets, so all the world is regulated – can succeed only if regulatory authority exists everywhere on the checkerboard. This is a problem in antitrust law. Although the United States is no longer the only country with effective antitrust enforcement, many countries still lack the capacity or political will (or both) to crack down on cartels. None of these considerations, however, can be found in the Empagran decision. The most striking passage in the opinion is one in which Justice Breyer suggests such a checkerboard world of regulation: “Why should American law supplant, for example, Canada's or Great Britain's or Japan's own determination about how best to protect Canadian or British or Japanese customers from anticompetitive conduct…?”60

This is a strange way of putting the problem. In Empagran, the named plaintiffs were not “Canadian, or British or Japanese customers”– they came from Ukraine, Ecuador, and Panama. Yet throughout the opinion, Justice Breyer never addresses the sovereign interests of those countries. When he states that application of U.S. law “would undermine foreign nations' own antitrust enforcement policies,”61 he is not speaking of Ecuador (which may be quite happy if the United States cracks down on cartels impacting that country).62 Instead, he speaks of Germany and Canada. When he fears that “to apply our remedies would unjustifiably permit [foreign nations’] citizens to bypass their own less generous remedial schemes, thereby upsetting a balance of competing considerations that their own domestic antitrust laws embody,”63 the balance of competing considerations he has in mind is that of Germany, Canada, and Japan, not that of Ukraine. In the end, Justice Breyer is not allowing Canada, Great Britain, or Japan to determine how best to protect their consumers as he proclaims. Instead, he is protecting Canadian, British, and Japanese corporations against their overcharged customers abroad.64 All named plaintiffs come from developing countries; all defendants and all amicus briefs come from developed countries. The court will apparently listen to the latter, and ignore the former.

In doing so, the Court adopts not only the nineteenth century idea of neatly distinguished territorial entities; it also adopts the old idea of an international law limited to European and North American countries.65 Developed countries regulate their markets, and the rest of the world remains unregulated – with the consequence that European and American defendants can retrieve the money they lose to American and European plaintiffs and regulators. Justice Breyer’s harmony among countries creates quite an exclusive club. In the name of avoiding U.S. hegemony over other developed countries, the Supreme Court endorses hegemony of developed over undeveloped countries. It avoids the imperialism of imposing U.S. law on others, but it endorses the imperialism of restricting access to U.S. law.

The exclusive focus on the sovereign interests of Western countries is best demonstrated, ironically, by the near absence of non-Western countries in Western discourse, especially in the United States. But it has a long and well-known history in international law. An uneasy relation to developing countries characterized the Court’s first major opinion on international antitrust, American Banana. 66 There, Justice Holmes suggested that the presumption against extraterritoriality might not apply to “regions subject … to no law that civilized countries would recognize as adequate,”67 but he did not ultimately apply this exception to Costa Rica, which for the time has aptly been characterized as a “Banana Republic”.68 One explanation can perhaps be found in a citation to a passage in Dicey’s work on conflict of laws dealing with “law governing acts done in uncivilized countries.”69 Dicey realized that deference to uncivilized countries could hardly be justified by principles of civility. Nonetheless, he suggested applying the rules governing relations with civilized countries by analogy, as far as possible.70 In other words, the inclusion of non-Western nations in the family of nations does not alter the concept of a state in international law. Instead, that concept, crafted after Western models, is imposed on nonWestern countries by analogy.

We can see even more striking similarities in the treatment of Africa in the slave trade cases. In Le Louis, Sir Walter Scott was aware that deference to the interests of France operates to the detriment of Africa – “peace in Europe will be war in Africa.”71 In the end, however, relations with France were more important than those with Africa. Scott asked: “Why is the British judge to intrude himself in subsidium juris, when everything requisite will be performed in the French Court in a legal and effectual manner?”72 . The ensuing move from natural law to positivism foreshadowed the U.S. Supreme Court’s similar move, beginning with Marshall’s opinion in The Antelope. 73 Less often discussed is how the move leads to a reduction in international law’s reach: if only the interests and positions of states count, then states that are unable to have their positions heard will be ignored.

Justice Breyer does not play out the developing against the developed world in the same way. Rather, he seems to imply that all countries share the same sovereign interest in self determination, which must be respected, even if most developing countries lack the means to crack down on big international cartels. This equation among sovereigns is reminiscent of Chief Justice Marshall’s argument why a universally shared law of nations against slavery does not exist: “The parties to the modern law of nations do not propagate their principles by force; and Africa has not yet adopted them. Throughout the whole extent of that immense continent, so far as we know its history, it is still the law of nations that prisoners are slaves.”74 Of course, this curious “gesture towards including Africa within the law of nations”75 was of little use to Africa, or at least to its inhabitants subject to the slave trade. Moreover, Marshall confined the judge’s standard of international law to “the general assent of that portion of the world of which he considers himself as a part”76 – in other words, the Western world, which has long supported the slave trade. In such a world, which treats slavery as either a sovereign choice by sovereign African states, or as a given fact of African customs that Western nations are free to accept or reject, a genuine African interest in the abolition of slavery is absent from any analysis.

This suggests that the role of sovereignty for developing countries may be more complex than is often argued. Traditionally, the extraterritorial application of developed countries’ laws is criticized for stripping developing countries of their own regulatory independence,77 with U.S. courts “as agents of U.S. hegemony.”78 The underlying assumption is that developing countries’ sovereignty is merely formal: they lack the economic and political power to be truly independent. Even if this assumption is correct, the conclusion does not necessarily follow. Cases from The Antelope through Empagran suggest that the refusal to apply law extraterritorially -- especially regarding conduct that is almost universally condemned (slavery, price-fixing) – can also be a problem, because it leaves third world countries unprotected against the power of transnational commercial actors. If developing countries lack the domestic means to regulate those actors themselves, they may depend on developed countries’ willingness to regulate their own actors.

The Court’s real choice in Empagran is not between imperialism and international harmony. Rather, the choice is between two kinds of imperialism: one that comes from imposing U.S. law on the rest of the world, and the other from rejecting access to the courts necessary for protection against Western corporate actors. The Court avoids one kind of imperialism, but Justice Breyer’s pride seems unwarranted, because the Court falls, perhaps unavoidably, for another kind.

#### It is more imperialist to vote neg.

Michaels ’16 [Ralf; 2016; Arthur Larson Professor of Law, Duke University School of Law; “Supplanting Foreign Antitrust,” <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4808&context=lcp>; KS]

These concerns must be taken seriously, but they can be answered and at least some of the expected problems can be avoided. Western hegemonialism today consists not only, or not even primarily, of the expansion of Western laws—it consists of the expansion of Western economic power. This is clearest where Western corporations are engaged in anti-competitive conduct. In this case, an expansion of Western law is not hegemonialist in itself; it merely follows the expansion of such economic power. In offering their laws to those injured by the conduct of their corporations, developed countries are not primarily hegemonialist—they largely re-establish the balance between economic freedom for corporations and protection of consumers that are taken for granted in those countries themselves.98 If anything, it is hegemonialist to allow corporations to raid foreign markets and not offer recourse in those corporations’ home courts. The fact that developing countries often do not object to such regulation by institutions in developed countries may be a sign that they approve. Indeed, foreign countries are often even plaintiffs in U.S. courts.99

#### Resiliency through financial diversity.

Tran & Caruana ’19 [Hung and Jamie; April 9; Nonresident senior fellow with the Atlantic Council and a former executive managing director of the Institute of International Finance; Former general manager at Bank for International Settlements, is a member of the board of directors at BBVA; *Atlantic Council,* “Diversity Builds Financial Resilience,” <https://www.atlanticcouncil.org/blogs/new-atlanticist/diversity-builds-financial-resilience/>; KS]

The diversity of financial institutions, with their differences in business models, liability structures, time horizons, and investment motivations could contribute greatly to financial resilience. Since the 2008 crisis, financial institutional diversity has helped sustain market liquidity while banks have curtailed their market-making activity [a readiness to buy and sell securities to accommodate their clients] due to regulatory changes and business strategies. Improving resiliency and liquidity in financial markets is critical to better finance the real economy, allocate risks properly, and support financial stability.

Many financial institutions and practices, together with regulatory and accounting requirements, however, tend to exacerbate cyclical fluctuations in the economy by buying assets or extending credit in good times and cutting back in bad times. It is important, therefore, to promote financial diversity and foster counter-cyclical behaviors among institutions capable of doing so. This helps reduce the risk of market imbalances leading to liquidity crises and offset self-reinforcing dynamics in times of financial stress. This risk has become important to guard against as the International Monetary Fund’s just-released World Economic Outlook finds the global economy entering a synchronized slowing phase.

The idea is to exploit the natural differences in the balance sheet structures of financial institutions like banks and investment funds on the one hand, and insurance companies and pension funds on the other, and develop regulatory and accounting regimes that encourage diversity of behaviors.

Banks and investment funds have a positive duration gap in their balance sheets—meaning the average duration of their assets tends to be longer than that of their liabilities. Consequently, banks and investment funds tend to act in a pro-cyclical manner. When asset quality deteriorates, prices fall, and interest rates rise, the value of banks’ assets declines by more than that of their liabilities. Regulatory capital and liquidity requirements increase under those circumstances, pressuring banks to liquidate falling assets.

Investment funds can sell into falling markets to meet redemption demand, according to research by the Bank for International Settlements. Funds can also buy and sell at the same time if they use similar investment strategies, sharing economic and market views.

The pro-cyclical practices described above can be ameliorated to some extent by regulations requiring higher capital and liquidity ratios for banks as well as heightened liquidity risk management. Better capitalized banks with sufficient liquidity can arguably contribute less, but more reliable, market liquidity—compared with the very liquid pre-crisis market conditions driven by high leverage, which turned out to be illusionary. Funds can also maintain adequate cash positions to meet possible redemption demand. In any event, pro-cyclicality remains a natural tendency for those institutions and needs to be managed.

By contrast, insurance companies and pension funds have a negative duration gap in their balance sheets and, under some circumstances, could play a stabilizing role in mitigating selling pressure. As their average asset duration is much shorter than that of their liabilities, when rates rise, the value of their assets fall by less than that of their liabilities. This strengthens their solvency, allowing them to acquire assets having fallen in prices. They thus can act in a counter-cyclical manner. However, some research indicates that this counter-cyclical behavior may need to be further supported. The International Monetary Fund’s Global Financial Stability Report observed that life insurance companies—but not property and casualty insurers—and pension funds act counter-cyclically in liquidity crises, but pro-cyclically in solvency crises.

More recent empirical research, using recently available granular data on security-by-security holdings by EU institutional investors, shows that their behavior is more nuanced. Overall, insurers and pension funds behaved in a counter-cyclical manner, but the intensity of such effect has weakened since the pre-crisis period. Other preliminary research notes that the counter-cyclical behavior of insurers and pension funds can be observed for safe assets whose value can be discounted by the same risk-free rate used for liabilities. However, these institutions tend to pro-cyclically reduce holding of risk assets, including equities and corporate bonds, as their values tend to fall by more than liabilities in a market correction.

Regulators should encourage insurers and pension funds to make more use of the counter-cyclical measures provided in the EU insurance regulatory regime Solvency II—as highlighted by the European Insurance and Occupational Pension Authority. While interventions by government authorities are necessary to stabilize severe financial turmoil, more counter-cyclical behaviors by insurers and pension funds, many of which likely stay resilient in a crisis, can help reduce the frequency and severity of financial crises. Remember: during the Great Depression in the United States and its aftermath, some 7,000 banks failed but most of the insurers remained financially healthy.

Overall, financial diversity should be a focus of the ongoing assessment of the cumulative impact of regulatory changes on the financial system.

### Impact – Africa

#### Restoration by 2060.

Bailey ’18 [Ronald; February 18; Science correspondent for Reason and the author of the books The End of Doom: Environmental Renewal in the Twenty-first Century (July 2015) and Liberation Biology: The Moral and Scientific Case for the Biotech Revolution (Prometheus, 2005). His work was featured in The Best American Science and Nature Writing 2004; *Reason,* “Is Degrowth the Only Way to Save the World?” <https://reason.com/2018/02/16/is-degrowth-the-only-way-to-save-the-wor/>; KS]

Water? Most water is devoted to the irrigation of crops; the ongoing development of drought-resistant and saline-tolerant crops will help with that. Hectares per capita? Humanity has probably already reached peak farmland, and nearly 400 million hectares will be restored to nature by 2060—an area almost double the size of the United States east of the Mississippi River. In fact, it is entirely possible that most animal farming will be replaced by resource-sparing lab-grown steaks, chops, and milk. Such developments in food production undermine the researchers' worries about overconsumption of biomass.

And humanity's material footprint is likely to get smaller too as trends toward further dematerialization take hold. The price system is a superb mechanism for encouraging innovators to find ways to wring ever more value out less and less stuff. Rockefeller University researcher Jesse Ausubel has shown that this process of absolute dematerialization has already taken off for many commodities.

After cranking their way through their models of doom, O'Neill and his colleagues lugubriously conclude: "If all people are to lead a good life within planetary boundaries, then the level of resource use associated with meeting basic needs must be dramatically reduced." They are right, but they are entirely backward with regard to how to achieve those goals. Economic growth provides the wealth and technologies needed to lift people from poverty while simultaneously lightening humanity's footprint on the natural world. Rather than degrowth, the planet—and especially its poor people—need more and faster economic growth.

### Impact – Foreign Policy

### Impact – China

### Heg [Kansas] – 2AC

#### Pursuit’s inevitable---retrenchment causes re-intervention and miscalc.

Wright 20, Director, Center on the US & Europe and Sr. Fellow, Project on Internat’l Order & Strategy at Brookings. (Thomas, March/April 2020, “The Folly of Retrenchment: Why America Can’t Withdraw From the World”, *Foreign Affairs*, https://www.foreignaffairs.com/articles/2020-02-10/folly-retrenchment)

A fifth problem with retrenchment is that it lacks domestic support. The American people may favor greater burden sharing, but there is no evidence that they are onboard with a withdrawal from Europe and Asia. As a survey conducted in 2019 by the Chicago Council on Global Affairs found, seven out of ten Americans believe that maintaining military superiority makes the United States safer, and almost three-quarters think that alliances contribute to U.S. security. A 2019 Eurasia Group Foundation poll found that over 60 percent of Americans want to maintain or increase defense spending. As it became apparent that China and Russia would benefit from this shift toward retrenchment, and as the United States’ democratic allies objected to its withdrawal, the domestic political backlash would grow. One result could be a prolonged foreign policy debate that would cause the United States to oscillate between retrenchment and reengagement, creating uncertainty about its commitments and thus raising the risk of miscalculation by Washington, its allies, or its rivals.

Fettweis is only about military spending, NOT speaking with one voice.

#### Internal politics are irrelevant---behavior is a function of structural system anarchy.

Kaplan ’12 [Robert; January 2012; Visiting Professor at the United States Naval Academy, consultant to the U.S. Army's Special Forces, the United States Marines, and the United States Air Force, citing John Mearsheimer, Professor of Political Science at the University of Chicago; The Atlantic, “Why John J. Mearsheimer Is Right (About Some Things),” <https://www.theatlantic.com/magazine/archive/2012/01/why-john-j-mearsheimer-is-right-about-some-things/308839/>]

Mearsheimer reveres both men for their bravery in pointing out unpopular truths, and throughout his career he has tried to emulate them. Indeed, in a country that has always been hostile to what realism signifies, he wears his “realist” label as a badge of honor. “To realism!” he says as he raises his wineglass to me in a toast at a local restaurant. As Ashley J. Tellis, Mearsheimer’s former student and now, after a stint in the Bush administration, a senior associate at the Carnegie Endowment, later tells me: “Realism is alien to the American tradition. It is consciously amoral, focused as it is on interests rather than on values in a debased world. But realism never dies, because it accurately reflects how states actually behave, behind the façade of their values-based rhetoric.”

Mearsheimer’s intellectually combative nature first disturbed the policy elite in 1988, with the publication of his critical biography, Liddell Hart and the Weight of History. In it, he asserts that the revered British military theorist Sir Basil H. Liddell Hart was wrong on basic strategic questions of the period between the first and second world wars, especially in his opposition to the use of military force against the Third Reich, and was a de facto appeaser even after evidence had surfaced about the systematic murder of Jews. Mearsheimer expected that his perspective would draw fire from British reviewers who had been close to Liddell Hart, which it did. “Other political scientists work on capillaries. John goes for the jugular,” notes Richard Rosecrance, a retired UCLA professor who mentored Mearsheimer in the 1970s.

Mearsheimer certainly triggered a bloodbath with a 2006 article that became a 2007 book written with the Harvard professor Stephen M. Walt and dedicated to Huntington, The Israel Lobby and U.S.Foreign Policy, which alleges that groups supportive of Israel have pivotally undermined American foreign-policy interests, especially in the run-up to the Iraq War. Some critics, like the Johns Hopkins University professor Eliot Cohen, accused Mearsheimer and Walt outright of anti-Semitism, noting that their opinions had won the endorsement of the white supremacist David Duke. Many others accused them of providing potent ammunition for anti-Semites. A former Chicago colleague of Mearsheimer’s labeled the book “piss-poor, monocausal social science.”

Last fall, Mearsheimer reenergized his critics by favorably blurbing a book on Jewish identity that many commentators denounced as grotesquely anti-Semitic. The blurb became a blot on Mearsheimer’s judgment, given the book’s author’s revolting commentary elsewhere, and was considered evidence of an unhealthy obsession with Israel and Jewishness on Mearsheimer’s part.

The real tragedy of such controversies, as lamentable as they are, is that they threaten to obscure the urgent and enduring message of Mearsheimer’s life’s work, which topples conventional foreign-policy shibboleths and provides an unblinking guide to the course the United States should follow in the coming decades. Indeed, with the most critical part of the world, East Asia, in the midst of an unprecedented arms race fed by acquisitions of missiles and submarines (especially in the South China Sea region, where states are motivated by old-fashioned nationalism rather than universal values), and with the Middle East undergoing less a democratic revolution than a crisis in central authority, we ignore Mearsheimer’s larger message at our peril.

In fact, Mearsheimer is best-known in the academy for his equally controversial views on China, and particularly for his 2001 magnum opus, The Tragedy of Great Power Politics. Writing in Foreign Affairs in 2010, the Columbia University professor Richard K. Betts called Tragedy one of the three great works of the post–Cold War era, along with Francis Fukuyama’s The End of History and the Last Man (1992) and Huntington’s The Clash of Civilizations and the Remaking of World Order (1996). And, Betts suggested, “once China’s power is full grown,” Mearsheimer’s book may pull ahead of the other two in terms of influence. The Tragedy of Great Power Politics truly defines Mearsheimer, as it does realism. Mearsheimer sat me down in his office, overlooking the somber Collegiate Gothic structures of the University of Chicago, and talked for hours, over the course of several days, about Tragedy and his life.

ONE OF FIVE children in a family of German and Irish ancestry, and one of the three who went to service academies, Mearsheimer graduated from West Point in the bottom third of his class, even after he fell in love with political science in his junior year. He got his master’s degree at the University of Southern California while stationed nearby in the Air Force, and went to Cornell for his doctorate. “I disagreed with almost everything I read, I venerated nobody. I found out what I thought by what I was against.” After stints at the Brookings Institution and Harvard, he went to the University of Chicago in 1982, and has never left.

Whereas Harvard, at least in Mearsheimer’s telling, is inclined to be a “government-policy shop” with close ties to Washington, the University of Chicago comes closer to a “pure intellectual environment.” At Harvard, many students and faculty members alike are on the make, networking for that first, or next, position in government or the think-tank world. The environment is vaguely unfriendly to theories or bold ideas, Huntington being the grand exception that proves the rule. After all, social-science theories are gross simplifications of reality; even the most brilliant theories can be right, say, only 75 percent of the time. Critics unfailingly seize on any theory’s shortcomings, damaging reputations. So the truly ambitious tend to avoid constructing one.

The University of Chicago, set off the beaten path in a society dominated by bicoastal elites, explains Mearsheimer, has always attracted “oddballs” with theories: political scientists who, while deeply respected, are at the same time not truly embraced by the American academic power structure. These iconoclasts have included Hans Morgenthau, as well as Leo Strauss, another German Jewish refugee, whom some link with neoconservatism. Realists especially have been outsiders in a profession dominated by liberal internationalists and others to the left.

For Mearsheimer, academia’s hostility to realism is evident in the fact that Harvard, which aims to recruit the top scholars in every field, never tried to hire the two most important realist thinkers of the 20th century, Morgenthau and Kenneth Waltz. But at Chicago, a realist like Mearsheimer, who loves teaching and never had ambitions for government service, can propound theories and unpopular ideas, and revel in the uproar they cause. Whatever the latest group-think happens to be, Mearsheimer almost always instinctively wants to oppose it—especially if it emanates from Washington.

The best grand theories tend to be written no earlier than middle age, when the writer has life experience and mistakes behind him to draw upon. Morgenthau’s 1948 classic, Politics Among Nations, was published when he was 44, Fukuyama’s The End of History was published as a book when he was 40, and Huntington’s Clash of Civilizations as a book when he was 69. Mearsheimer began writing The Tragedy of Great Power Politics when he was in his mid-40s, after working on it for a decade. Published just before 9/11, the book intimates the need for America to avoid strategic distractions and concentrate on confronting China. A decade later, with the growth of China’s military might vastly more apparent than it was in 2001, and following the debacles of the Iraq and Afghanistan wars, its clairvoyance is breathtaking.

Tragedy begins with a forceful denial of perpetual peace in favor of perpetual struggle, with great powers primed for offense, because they can never be sure how much military capacity they will need in order to survive over the long run. Because every state is forever insecure, Mearsheimer counsels, the internal nature of a state is less important as a factor in its international behavior than we think. “Great powers are like billiard balls that vary only in size,” he intones. In other words, Mearsheimer is not one to be especially impressed by a state simply because it is a democracy. As he asserts early on, “Whether China is democratic and deeply enmeshed in the global economy or autocratic and autarkic will have little effect on its behavior, because democracies care about security as much as non-democracies do.” Indeed, a democratic China could be more technologically innovative and economically robust, with consequently more talent and money to lavish on its military. (A democratic Egypt, for that matter, could create greater security challenges for the United States than an autocratic Egypt. Mearsheimer is not making moral judgments. He is merely describing how states interact in an anarchic world.)

Face it, Mearsheimer says in his book, quoting the historian James Hutson: the world is a “brutal, amoral cockpit.” To make sure readers get the point, he taps the British scholar E. H. Carr’s 1939 book, The Twenty Years’ Crisis, 1919–1939, which takes a wrecking ball to liberal internationalism. One of its main points: “Whatever moral issues may be involved, there is an issue of power which cannot be expressed in terms of morality.” To wit, in the 1990s we were able to intervene to save lives in the Balkans only because the Serbian regime was weak and had no nuclear weapons; against a Russian regime that was at the same time committing incalculable human-rights violations in Chechnya, we did nothing, just as we did nothing to halt ethnic cleansing in the Caucasus. States take up human rights only if doing so does not contradict the pursuit of power.

But being a realist is not enough for Mearsheimer; he needs to be an “offensive realist,” as he calls himself. “Offensive realism,” he writes in Tragedy, “is like a powerful flashlight in a dark room”: it cannot explain every action throughout hundreds of years of history, but he exhaustively goes through that history to demonstrate just how much it does explain. Whereas Hans Morgenthau’s realism is rooted in man’s imperfect nature, Mearsheimer’s is structural, and therefore that much more inexorable. Mearsheimer cares relatively little about what individual statesmen can achieve, for the state of anarchy in the international system simply guarantees insecurity. Compared with Mearsheimer, Henry Kissinger and the late American diplomat Richard Holbrooke—two men usually contrasted with each other—are one and the same: romantic figures who believe they can pivotally affect history through negotiation. Kissinger, in fact, has written lush histories of statesmen in A World Restored: Metternich, Castlereagh and the Problems of Peace 1812–1822 (1957) and Diplomacy (1994), embracing his subjects with charm and warmth, whereas Mearsheimer’s Tragedy is cold and clinical. Kissinger and Holbrooke care deeply about the contingencies of each situation, and the personalities involved; Mearsheimer, who was always good at math and science in school, sees only schemata, even as his own historical analyses have helped to rescue political science from the purely quantitative studies favored by others in his field.

Just as Mearsheimer’s theory of realism is opposed to Morgenthau’s in being structural, it is also opposed to the structural realism of Columbia’s Waltz in being offensive. Offensive realism posits that status quo powers don’t exist: all great powers are perpetually on the offensive, even if obstacles may arise to prevent them from expanding their territory or influence.

What was Manifest Destiny, Mearsheimer asks the reader, except offensive realism? “Indeed, the United States was bent on establishing regional hegemony, and it was an expansionist power of the first order in the Americas”: acquiring territory from European powers, massacring the native inhabitants, and instigating war with Mexico, in good part for the sake of security. Mearsheimer details Japan’s record of aggression in Korea, China, Russia, Manchuria, and the Pacific Islands after its consolidation as a nation-state following the 19th-century Meiji Restoration. To demonstrate that the anarchic structure of the international system, not the internal characteristics of states, determines behavior, he shows how Italy, during the eight decades that it was a great power, was equally aggressive under both liberal and fascist regimes: going after North Africa, the Horn of Africa, the southern Balkans, southwestern Turkey, and southern Austria-Hungary. He characterizes Germany’s Otto von Bismarck as an offensive realist who engaged in conquest during his first nine years in office, and then restrained himself for the next 19 years. “In fact, [that restraint] was because Bismarck and his successors correctly understood that the German army had conquered about as much territory as it could without provoking a great-power war, which Germany was likely to lose.” But when Mearsheimer picks up the story at the start of the 20th century, Germany is again aggressive, because by now it controls a larger percentage of the world’s industrial might than any other European state. Behind every assertion in this book is a wealth of historical data that helps explain why Tragedy continues, as Richard Betts predicted, to grow in influence.

“To argue that expansion is inherently misguided,” Mearsheimer writes, “implies that all great powers over the past 350 years have failed to comprehend how the international system works. This is an implausible argument on its face.” The problem with the “moderation is good” thesis is that “it mistakenly equates [so-called] irrational expansion with military defeat.” But hegemony has succeeded many times. The Roman Empire in Europe, the Mughal Dynasty in the Indian subcontinent, and the Qing Dynasty in China are some of his examples, even as he mentions how Napoleon, Kaiser Wilhelm II, and Adolf Hitler all came close to success. “Thus, the pursuit of regional hegemony is not a quixotic ambition,” though no state has yet achieved regional hegemony in the Eastern Hemisphere the way the United States achieved it in the Western Hemisphere.

The edgiest parts of Tragedy are when Mearsheimer presents full-bore rationales for the aggression of Wilhelmine Germany, Nazi Germany, and imperial Japan.

The German decision to push for war in 1914 was not a case of wacky strategic ideas pushing a state to start a war it was sure to lose. It was … a calculated risk motivated in large part by Germany’s desire to break its encirclement by the Triple Entente, prevent the growth of Russian power, and become Europe’s hegemon.

As for Hitler, he “did indeed learn from World War I.” Hitler learned that Germany could not fight on two fronts at the same time, and he would have to win quick, successive victories, which, in fact, he achieved early in World War II. Japan’s attack on Pearl Harbor was a calculated risk to avoid abandoning the Japanese empire in China and Southeast Asia in the face of a U.S. embargo on imported energy and machine tools.

Mearsheimer is no warmonger or militarist. His job as a political scientist is not to improve the world, but to say what he thinks is going on in it. And he thinks that while states rightly yearn for a values-based foreign policy, the reality of the anarchic international system forces them to behave according to their own interests. In his view, either liberal internationalism or neoconservatism is more likely than offensive realism to lead to the spilling of American blood. Indeed, because, as some argue, realism in the classical sense seeks the avoidance of war through the maintenance of a balance of power, it is the most humanitarian approach possible. (In this vein, fighting Nazi Germany was essential because the Nazis were attempting to overthrow the European balance-of-power system altogether.)

#### AND accommodation fails regardless.

Ward ’17 [Steven; 2017; Professor of Government at Cornell University; International Studies Quarterly, “Lost in Translation: Social Identity Theory and the Study of Status in World Politics,” vol. 61]

But the central behavioral claim at the core of the flattened framework—that geopolitically competitive behavior results from persistent status denial—lacks a basis in SIT and much in the way of empirical support. And if persistent status denial is not causally related to geopolitically competitive behavior, then the flattened framework will lead to misdiagnoses of the causes of Russian and Chinese aggression and to inappropriate or counterproductive policy prescriptions. For instance, the social-psychological version of the SIT framework implies that accommodating Chinese and Russian status claims may prove a less effective way of responding to geopolitically competitive behavior than trying to convince Beijing and Moscow of the futility, or steep costs, of competing for status. This is precisely the opposite of the prescription that flows from the flattened framework.26

#### Consilience of empirical studies proves that interventions are good.

**Walter et al** ’20 [Barbara; November 24; Professor of political science at the School of Global Policy and Strategy and an adjunct professor in the UC San Diego Department of Political Science, Lise Morjé Howard tenured Professor in the Department of Government at Georgetown University, V. Page Fortna associate professor of political science at Columbia University; British Journal of Political Science, “The Extraordinary Relationship between Peacekeeping and Peace,” https://www.cambridge.org/core/journals/british-journal-of-political-science/article/abs/extraordinary-relationship-between-peacekeeping-and-peace/D2D5D262B60315387B0B23D1D4F79CC9]

Reality, however, tells a different story. Over the last twenty years, numerous empirical studies have examined the role of third-party peacekeeping in reducing violence around the world. The data overwhelmingly reveal that peacekeeping, especially UN peacekeeping, is surprisingly effective. Using different datasets and statistical models, leveraging different time periods, and measuring peacekeeping in somewhat different ways, dozens of researchers at different universities, with diverse funding streams and different preferences, have all found that peacekeeping has a large, positive and statistically significant effect on reducing violence of all sorts. Despite the very real problems associated with UN peacekeeping, it is remarkably effective at bringing peace.

This review article has three goals. The first is to summarize the results of past empirical research to move the debate beyond the question of whether peacekeeping works to the more pressing questions of how, when and why it works. The second goal is to reveal the limitations of current quantitative studies in order to identify areas in which scholars can make big, new contributions to the field. The final goal is to propose a new research agenda that is heavily evaluative – one that informs policy makers about the specific practices, mission compositions, and mandates that work, and also identifies the local, regional, and international conditions that amplify or diminish peacekeeping's success. This type of research could help reduce the costs of peacekeeping operations (PKOs), eliminate some of the negative consequences of interventions and potentially save even more lives.

What the Current Evidence Reveals

Numerous large-n statistical studies have explored the relationship between third-party peacekeeping and different forms of violence (Dorussen 2014; Gizelis, Dorussen and Petrova 2016); Di Salvatore and Ruggeri 2017; Sandler 2017). What is most striking about these studies is the consistency of their findings. Almost all of them find that peacekeeping is highly effective at preventing violence before it begins, reducing violence in the midst of war and preventing violence from recurring once it has ended. All else equal, countries and regions that receive peacekeeping missions experience less armed conflict, fewer civilian and combatant deaths, fewer mass killings, longer periods of post-conflict peace and fewer repeat wars than those that do not receive peacekeepers. This relationship – between peacekeeping and lower levels of violence – is so consistent across different large-n analyses that it has become one of the strongest findings in the international relations literature to date.

The power of peacekeeping is all the more striking given that the UN tends to intervene in the toughest cases. Multiple scholarly studies have found that the UN Security Council tends to send peacekeepers to countries with more violence, particularly bad governments and ongoing conflict (Beardsley and Schmidt 2012; Costalli 2013; de Jonge Oudraat 1996; Fortna 2004a; Fortna 2008a; Gilligan and Sergenti 2008; Gilligan and Stedman 2003; Hegre, Hultman and Nygard 2019 Ruggeri, Dorussen, and Gizelis 2017). The most recent study by Ruggeri, Dorussen and Gizelis (2018) found that UN peacekeepers are deployed to places experiencing active conflict. Using geographically and temporally disaggregated data on UN peacekeepers' deployment in eight African countries between 1989 and 2006, they find that peacekeepers tend to be deployed to the dangerous frontlines of a conflict. Their research did reveal some problems with deployment. Peacekeepers tended to arrive late and be sent to conflict zones near urban areas, ignoring violence further afield. But the fact that peacekeepers often go to the most demanding places (even if late and disproportionately urban) suggests that academic studies have probably underestimated the effectiveness of peacekeeping at reducing violence.

These findings do not imply that peacekeeping works all the time, or as efficiently and successfully as it could. There are many well-known cases such as Bosnia and Rwanda where UN peacekeeping failed.

#### Military primacy solves great-power war, rogue states, prolif, and growth. Otherwise, transition wars.

Brands & Edel 19, \*PhD, Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins School of Advanced International Studies. \*\*PhD, Senior Fellow and Visiting Scholar at the United States Studies Centre at the University of Sydney. (Hal and Charles, *The Lessons of Tragedy: Statecraft and World Order*, Ch. 5: The Contemporary Amnesia, Yale University Press)

As William Wohlforth has noted, American primacy and activism acted as a powerful deterrent to great-power conflict by creating enormous disincentives for Russia, China, or other actors to incur the “focused enmity” of the United States.11 The persistence and even extension of the U.S. security blanket smothered potential instability in unsettled regions such as Eastern Europe, while removing any possibility of German or Japanese revanchism—a prospect much feared in the early 1990s—by keeping those countries tightly lashed to Washington. American intervention helped extinguish bloody conflicts in the Balkans before they could spread to neighboring countries; U.S. diplomatic and military pressure kept aggressive tyrannies such as Iraq, Iran, and North Korea bottled up and helped slow the spread of nuclear weapons. U.S. support helped democratic forces triumph in countries from Haiti to Poland, as the number of democracies rose from 76 in 1990 to 120 in 2000; America crucially assisted the advance of globalization and the broad prosperity that came with it by promoting pro-market policies and providing the necessary climate of reassurance and stability.12

## Cap K

### TL

#### Prefer util---it’s the only non-arbitrary risk calculus, life is a prereq to their impacts, and no suffering comes first.

Greene 2010 – Joshua, Associate Professor of Social science in the Department of Psychology at Harvard University (The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings, accessed: www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf)

It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get characteristically deontological answers. Some will be tautological: "Because it's murder!" Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about them because they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

### Framework – AT: Gani

#### ---Without the ability to compare proposals they have no method for spill-up, and their refusal to engage the process of imaginative hypothesis generation proves they either leave things in the hands of useless elites or they spill up to a new society that’s more likely than not to fail

Wilkinson, 17—Vice President for Policy at the Niskanen Center (Will, October 24, “PUBLIC POLICY AFTER UTOPIA,” <https://niskanencenter.org/blog/public-policy-utopia/>, dml)

Many political philosophers, and most adherents of radical political ideologies, tend to think that an ideal vision of the best social, economic, and political system serves a useful and necessary orienting function. The idea is that reformers need to know what to aim at if they are to make steady incremental progress toward the maximally good and just society. If you don’t know where you’re headed—if you don’t know what utopia looks like—how are you supposed to know which steps to take next? The idea that a vision of an ideal society can serve as a moral and strategic star to steer by is both intuitive and appealing. But it turns out to be wrong. This sort of political ideal actually can’t help us find our way through the thicket of real-world politics into the clearing of justice. I’ve discussed the problems with ideal theory at length, in the context Gerald Gaus’ tremendous book The Tyranny of the Ideal, in a Vox column. This piece will be easier to understand if you read that first. Jacob Levy’s paper, “There’s No Such Thing as Ideal Theory,” is an outstanding complement. And, on the more technical side, the work of UCSD’s David Wiens is state of the art, and adds texture to Gaus’ critique. A major paradigm shift in political theory is underway, and it’s all over but the shoutin’ for ideal theory. But it takes a while for the shoutin’ to peter out. New paradigms can take a generation or more to trickle down through the intellectual culture. So we’ve barely begun to grasp what it means to give up on ideal theory, especially in public policy. It’s a bit dramatic to say that the death of ideal theory changes everything, but it changes a lot. It definitely changes what it means to be an ideologically principled think tank. If you agree with Gaus, as I do, then you will think that there’s a pretty major intellectual mistake lurking within the ideal-theoretic version of libertarianism that the most prominent institutions of the “freedom movement” were built to promote. Again, this has nothing to do with libertarianism, per se. Gaus’ argument is general. It doesn’t matter which normative standard you use to rank possible social systems. It could be the orthodox libertarian conception of freedom as non-coercion, John Rawls’ two principles of justice, or a radically egalitarian conception of material equality. It doesn’t matter. In order to say that any particular system is the best in terms of your chosen normative standard, you’ve got to be able to rank rival systems against that standard. Doing that ranking in a principled, non-arbitrary way requires evidence of what the realization of your favorite possible social world would actually look like. Otherwise you can’t really say that it does better in terms of your chosen standard than competing systems. Utopia is a guess The fact that all our evidence about how social systems actually work comes from formerly or presently existing systems is a huge problem for anyone committed to a radically revisionary ideal of the morally best society. The further a possible system is from a historical system, and thus from our base of evidence about how social systems function, the more likely we are to be mistaken about how it would work if it were realized. And the more likely we are to be mistaken about how it would actually work, the more likely we are to be mistaken that it is more free, or more equal, or more socially just than other systems, possible or actual. Indeed, there’s basically no way to rationally justify the belief that, say, “anarcho-capitalism” ranks better in terms of libertarian freedom than “Canada 2017,” or the belief that “economic democracy” ranks better in terms of socialist equality than “Canada 2017.” You may think you can imagine how anarcho-capitalism or economic democracy would work, but you can’t. You’re really just guessing—extrapolating way beyond your evidence. You can’t just stipulate that it works the way you want it to work. Rationally speaking, you probably shouldn’t even suspect that your favorite system comes out better than an actual system. Rationally speaking, your favorite probably shouldn’t be your favorite. Utopia is a guess. Again this is a general problem. But it does hit especially hard for those who appreciate the unpredictability of complex systems and the inevitability of unintended consequences. It’s no coincidence that Gaus is a Hayekian. As my colleague Jeffrey Friedman argues, expert predictions about the the likely effects of changing a single policy tend to be pretty bad. I’ll use myself as an example. I’ve followed the academic literature about the minimum wage for almost twenty years, and I’m an experienced, professional policy analyst, so I’ve got a weak claim to expertise in the subject. What do I have to show for that? Not much, really. I’ve got strong intuitions about the likely effects of raising minimum wages in various contexts. But all I really know is that the context matters a great deal, that a lot of interrelated factors affect the dynamics of low-wage labor markets, and that I can’t say in advance which margin will adjust when the wage floor is raised. Indeed, whether we should expect increases in the minimum wage to hurt or help low-wage workers is a question Nobel Prize-winning economists disagree about. Labor markets are complicated! Well, the comprehensive political economies of nation-states are vastly more complicated. And that means that our predictions about the outcome of radically changing the entire system are unlikely to be better than random. If your favorite system is quite a bit different from any system that has existed, then even if it were true that it would rank numero uno in terms of your favorite normative standard, you’re not in a position to rationally believe it. Clearly then, it’s not actually useful to aim toward a distant ideal when you don’t really have a good reason to believe that it’s better than actually existing systems in terms of liberty or equality or nationalist solidarity or whatever it is you care about. This is a hard lesson for ideologues to swallow. I still haven’t totally digested it. But a number of things have become much clearer after giving up on my sinful, ideal-theoretic ways. Analysis after ideal theory: measurement and comparison The death of ideal theory implies a non-ideological, empirical, comparative approach to political analysis. That doesn’t mean giving up on, say, the value of freedom. I think I’m more libertarian—more committed to value of liberty—than I’ve ever been. But that doesn’t mean being committed to an eschatology of liberty, a picture of an ideally free society, or a libertarian utopia. We’re not in a position to know what that looks like. The best we can do is to go ahead and try to rank social systems in terms of the values we care about, and then see what we can learn. The Cato Institute’s Human Freedom Index is one such useful measurement attempt. What do we see? Look: Every highlighted country is some version of the liberal-democratic capitalist welfare state. Evidently, this general regime type is good for freedom. Indeed, it is likely the best we have ever done in terms of freedom. Moreover, Denmark (#5), Finland (#9), and the Netherlands (#10) are among the world’s “biggest” governments, in terms of government spending as a percentage of GDP. The “economic freedom” side of the index, which embodies a distinctly libertarian conception of economic liberty, hurts their ratings pretty significantly. Still, according to a libertarian Human Freedom Index, some of the freest places in on Earth have some of the“biggest” governments. That’s unexpected. This is why we need to try to rank social systems in terms of our prized political values. Our guesses about which systems lead to which consequences are likely to be pretty bad. Suppose we were to poll a bunch of American libertarians, and ask them to tell us which country enjoys more freedom, according the Cato Institute’s metrics. The United States or Sweden? The United States or Germany? The United States or Canada? The United States or Lithuania? I’m pretty sure almost all of them would get it wrong in each of these pairwise comparisons. Why? Because typical libertarians carry an ideal-theoretic picture of the “the free society” around in their heads, and (for some reason!) a minimum of taxation and redistribution is among the most salient aspects of that picture. And that means that Denmark, say, doesn’t seem very free relative to that picture. But there’s a great deal more to freedom than fiscal policy. And we see that, as a matter of fact, the country with the biggest-spending government in the world is among the freest countries in the world, and ranks first in personal freedom. That is our basic data. It doesn’t necessarily imply that the United States ought to do more redistributive social spending. But when a freedom index, built from libertarian assumptions, shows that freedom thrives in many places with huge welfare states, it should lead us to downgrade our estimate of the probability that liberty and redistribution are antithetical, and upgrade our estimate of the probability that they are consistent, and possibly complementary. That’s the sort of consideration that mainly drives my current views, not ideal-theoretical qualms about neo-Lockean libertarian rights theories. Though libertarianism is of personal interest to me, I want to emphasize again that my larger point has nothing to do with libertarianism. The same lesson applies to alt-right ethno-nationalists dazzled by a fanciful picture of a homogenous, solidaristic ethno-state. The same lesson applies to progressives and socialists in the grip of utopian pictures of egalitarian social justice. Of course, nobody knows what an ideally equal society would look like. If we stick to the data we do have, and inspect the top ranks of the Social Progress Index, which is based on progressive assumptions about basic needs, the conditions for individual health, well-being, and opportunity, you’ll mostly find the same countries that populate the Freedom Index’s leaderboard. Here: The overlap is striking. And this highlights some of the pathologies of ideal theory: irrational polarization and the narcissism of small differences. Some pathologies of ideal theory, both personal and political Ideal theory can drive political conflict by concealing overlapping consensus. Pretty much any way you slice it, Denmark is an actually-existing utopia. But so is Switzerland. So is New Zealand. The effective difference between the Nordic and Anglo-colonial models, in terms of “human freedom” and “social progress” is surpassingly slight. Yet passionate moral commitment to purist ideals of justice can lead us to see past the fact that the liberal-democratic capitalist welfare state, in whatever iteration, is awesome, and worth defending, from the perspective of multiple, rival political values. We miss the fact that these values fit together more harmoniously than our theories lead us to imagine. I suspect this has something to do with the fact that utopia-dwellers around the world seem to be losing faith in liberal democracy, and the fact that “neoliberalism” can’t get no love, despite the fact that they measurably deliver the goods like crazy. Yet ideologues interpret this loss of faith as evidence of objective failure, which they diagnose as a lack of satisfactory progress toward their version of utopia, and push ever more passionately for an agenda they have no rational reason to believe would actually leave anyone better off. It is intellectually corrupt and corrupting to define liberty or equality or you-name-it in terms of an idealized, counter-factual social system that may or may not do especially well in delivering the goods. Commitment to a vision of the perfect society is more likely than not to lead you astray. Consider how unlikely it is for a typical libertarian to correctly predict more than a couple of the top-ten freest countries on the libertarian freedom index. The fact that ideological radicals are pretty unreliable at ranking existing social systems in terms of their favored values ought to make us skeptical of claims that highly counterfactual systems would rank first. And it ought to lead us to suspect that ideal-theoretical political theorizing leads us to see the actual world less clearly than we might, due to cherry-picking and confirmation bias. If you’ve already irrationally ranked a fanciful social system tops in terms your favored value, you’ve effectively committed to the idea that the world works in a certain way without sufficient evidence that it actually does. This is almost always a commitment of identity and group membership rather than a judgment of reason. And it leads you to cast about for evidence that the world does work the way it would need to work in order to vindicate your ranking. You end up lending a great deal of credibility to comforting evidence, while ignoring and dismissing evidence that the world doesn’t work that way you’d like it to work. The result is that your ideal-theoretic commitment ends up driving your model of the world. But if your ideal theory is likely to be wrong in the first place, using it as a filter for evaluating evidence is going to leave you with a disastrously distorted picture of the way the world actually works. And that means you’re going to make systematically terrible predictions about the likely consequences of this or that policy change. You may want to identify reforms most likely to promote liberty or equality, or whatever, but you’ll end up really bad at this because your distorted ideological model of the world will leave you unable to evaluate evidence objectively. Progress in policy requires idealistic moral passion without preconceived ideals For me, the death of ideal theory has meant adopting a non-speculative, non-utopian perspective on freedom-enhancing institutions. If you know that you can’t know in advance what the freest social system looks will look like, you’re unlikely to see evidence that suggests that policy A (social insurance, e.g.) is freedom-enhancing, or that policy B (heroin legalization, e.g.) isn’t, as threats to your identity as a freedom lover. Uncertainty about the details of the freest feasible social scheme opens you up to looking at evidence in a genuinely curious, non-biased way. And it frees you from the anxiety that genuine experts, people with merited epistemic authority, will say things you don’t want to hear. This in turn frees you from the urge to wage quixotic campaigns against the authority of legitimate experts. You can start acting like a rational person! You can simply defer to the consensus of experts on empirical questions, or accept that you bear an extraordinary burden of proof when you disagree. I think the reign of ideal theory in political philosophy turned lots of incredibly smart, principled, morally motivated people into unreliable, untrustworthy ideologues. This has left the field of rational policy analysis to utilitarian technocrats, who have their own serious problems. Long story short, we ended up with a sort of divide in public policy between morally passionate advocates trapped in epistemic bubbles and technicians capable of objective analysis but devoid of guiding vision. What we need are folks who are passionate about freedom, or social justice (or what have you) who actively seek solutions to domination and injustice, but who also don’t think they already know exactly what ideal liberation or social justice look like, and are therefore motivated to identify our real alternatives and to evaluate them objectively. The space of possibility is infinite, and it takes energy and enthusiasm to want to explore it. Imaginative hypothesis generation is the great intangible without which progress is impossible or maddeningly slow. The technicians, the quants, the lab rats tend to be awful at dreaming up hypotheses. Ideological moral passion is the perfect wild horse to harness; it could power the exploration of the near frontier of the feasible. But thanks to the tyranny of the ideal, it’s a source of intellectual energy more often wasted hooked up to a wagon train headed off the map to Shangri-La.

#### Their FW profoundly misunderstands fiat and bungles anti-capitalist politics

Michael Eber 5, former Director of Debate at Michigan State University, “Everyone Uses Fiat”, April 8, <http://www.opensubscriber.com/message/edebate@ndtceda.com/1077700.html>

It is shocking to me how, after literally a DECADE of debates, no one seems to understand what the hell fiat is. Policy teams foolishly defend "role playing" even though they do not role play. And critique teams reject fiat even though almost every single K alternative relies on a utopian imaginary that necessitates a greater degree of fiat than the reformist Aff. Debate is about opinion formation, not role-playing.Affirmative policy teams do not pretend to BE the federal government. They merely IMAGINE the consequences of the government enacting the plan as a means of determining whether it SHOULD be done. **All fiat represents is the step of imagining hypothetical enactment of the plan as an intellectual tool for deciding whether WE should endorse it**. "How should we determine whether or not to ENDORSE lifting sanctions on Cuba?" "Well, what would happen if the government did that?" "Let's IMAGINE a world where sanctions are lifted. What would that world look like? Would it be better than the status quo?" "Is that world better than competitive alternatives?" This conversation does NOT posit the discussants AS the federal government. They do not switch identities and act like Condaleeza and Rummy. They do not give up the agency to decide something for themselves - the whole point is simply to use the imagination of fiat to determine OUR OPINION. "I think sanctions should be removed [by the government] because IT IS A GOOD IDEA. It would save lives." "I think sanctions should not be removed because that policy would help Castro and make things worse" It is nonsensical to simultaneously say "Aff = fiat = bad" and then defend alternatives that are only coherent/debatable/endorsable BY USING THE IMAGINITIVE TOOL OF FIAT. "Our alternative is revolution against capitalism" "Why do that? How should we determine whether or not to ENDORSE revolution against capitalism?" "Well, what would happen if we did that?" "Let's IMAGINE a world of revolution against capitalism [or us demanding revolution, or whatever]. Would that be a good thing?" It is NEARLY IMPOSSIBLE, and certainly irresponsible, to have a debate about whether to reject capitalism without imagining what would happen if we did. It is also incoherent to say something like "we will defend the consequences of our plan, but not fiat." The imagination of "what would happen if" IS FIAT***.***If you want to make framework debates better, then never again utter the stupid phrases "pre-fiat" and "post-fiat."

### Perms

### AT: Racial Cap – 2AC

#### Racial capitalism’ as an analytic mystifies social relations AND is foundationally inaccurate.

Julian Go 21, Professor, Sociology, University of Chicago, "Three Tensions in the Theory of Racial Capitalism," Sociological Theory, Vol. 39, Issue 1, pg. 38-44, 2021, SAGE.

The term racial capitalism is by now something of a buzzword. It has become especially prominent among historians who are rethinking the relationship between slavery and capitalism (Johnson 2018; Kelley 2017; Robinson 2000). It has also been used by legal scholars, health scholars, philosophers, ethnic studies scholars, political scientists, and, of course, sociologists (Dawson 2018; Fraser 2019; Leong 2013; Melamed 2015; Pirtle 2020; Virdee 2019). As a term, its origins lie in Marxist intellectuals and activists writing in the context of South African apartheid in the 1970s (Hudson 2018; Legassick and Hemson 1976; Nupen 1972). More recently, Robinson (2000) helped popularize the term in his analysis of the conditions under which the “black radical tradition” emerged.

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

In this essay, I offer the beginnings of an answer by identifying three aporias, or theoretical tensions, in the existing literature. The first tension has to do with the concept of race itself. What does the signifier race in the term racial capitalism actually mean? The second has to do with the inadequacies of existing theory, particularly Marxist theories of capitalism, that the racial capitalism literature is meant to remedy. The third has to do with whether racism is immanent to capitalism or contingent, which in turn raises the issue of social difference in modern capitalism.

In highlighting these tensions, my point is not to criticize or disavow the racial capitalism literature but rather to highlight some of the main underlying themes or issues that I think are generative of further conceptualization, theorizing, and research. Accordingly, although I do not seek to fully resolve these three tensions, I offer some ways we might think about and work with them in a productive manner.

Defining Racial Capitalism

To start, a brief overview of the meaning of the term racial capitalism is warranted. This is difficult, however, because definitions in the existing literature are either murky or differ from one another. Pirtle (2020), writing on the racial inequalities of coronavirus disease 2019, used the term but did not define it. Leong (2013:2190) used racial capitalism to refer to how white institutions appropriate nonwhite identities as symbolic capital. Ralph and Singhal (2020) found that the term is used largely to “explain how racialism merged with capitalism . . . and to highlight coercion and productivity in capital investment and forms of exchange” (p. 857). The South African Marxists Legassick and Hemson (1976) and the National Union of South African Students were among the first to use the term before Cedric Robinson (2000) deployed it, but they used the term to specify the particularity of apartheid, whereas Robinson used it to refer to global capitalism as it first emerged in Europe.

Despite these complexities, it is possible to identify shared features of the term. First, racial capitalism implies that there are deep connections between racism or racial inequality and capitalism. Much of the literature refers to historical connections, such as those between precapitalist racial divisions in Europe and the subsequent development of capitalism (Kelley 2017; Robinson 2000) or between slavery and capitalist development (Johnson 2018, 2020). Maybe this is why so many historians have taken to the concept. But the term is also used by social scientists to refer to more recent connections. South African intellectuals’ and activists’ use of the term referred to how apartheid and the South African economy were mutually dependent. Other scholars use the term to highlight disparities within the working class, which was one of Robinson’s (2000) concerns (see also Melamed 2015:77). Others emphasize how capitalism is presently dependent on violence and dispossession—social relations that conventional theories of capitalism such as Marx’s treat as irrelevant to the system, aberrations from it, or precursors to it (Ralph and Singhal 2019:857). Throughout these usages, the overarching point appears to be to explore and disclose the ways “racial hierarchies can be functional for capitalist social orders” and vice versa (Dawson 2018).

A second component of the term racial capitalism is that it is typically used to refer to global relations rather than capitalism within a single national context. South African intellectuals used the term to capture South Africa’s particular situation, but they insinuated that South Africa exhibited a particular variant of a system that was replicated cross-nationally. Robinson, and others in the same tradition, from DuBois to Oliver Cox, all discussed race on a global scale, exploring histories of colonial conquest, imperialism, and dispossession to make visible capitalism’s relation to race. Historians have shown how slavery was a transatlantic system encompassing transnational and transimperial relations. Racial capitalism, in short, is also global capitalism. The world’s workers constitute, as DuBois (1935) famously put it, the “dark proletariat” (p. 15).

Finally, the racial capitalism concept has political implications. Discussions of racial capitalism among South African intellectuals and activists were explicitly about political projects. After all, if racism and capitalism are intertwined, the antiapartheid struggle also had to be an anticapitalist struggle—and vice versa. “We must come to grips with the assertions of the African masses for political rights and economic prosperity,” declared the National Union of South African Students, “and we must seriously investigate what changes there must be to South Africa’s particular brand of racial capitalism in order to accommodate the fulfilment of these aspirations” (Nupen 1972:2). Walzer (2020) made the political implications of the term even clearer. If racism and capitalism are interconnected, as the racial capitalism thesis holds, then the fight against racism is also a fight against capitalism. But if race and capitalism are not connected, antiracist struggles and anticapitalist struggles must be thought of as separate and distinct struggles, and the struggles must proceed accordingly.

What is the “Race” in Racial Capitalism?

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

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

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

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

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

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

Can this tension be resolved? One way to do so is to raise the possibility that the racial capitalism concept works best for groups that have been undoubtedly racialized, such as members of the African diaspora in North America.3 Racial capitalism would thus refer mainly to the black ex-slave population, which has suffered some of the clearest and most virulent forms of racism. This might explain why the literature on racial capitalism has focused on African Americans and transatlantic slavery rather than other groups elsewhere in the world. Yet this seeming resolution would significantly reduce the scope of the racial capitalism concept. Racial capitalism would no longer depict a global system.

Perhaps the best resolution is one that arrives through more reflexive research. We can explore how “race” is connected to capitalism in diverse sites and across historical periods, but we must be more conscious about whether we are referring to analysts’ definition of race or a category of practice. Put simply, we can arrive at a resolution only through careful research that more clearly defines “race.”

The Inadequacy of Existing Theory

A second tension in the racial capitalism literature has to do with the relationship between this literature and existing social theories of capitalism, in particular, Marxian theories of capitalism. Animating the racial capitalism approach is the claim that Marxian theories of capitalism are inadequate because they obfuscate the racial foundations of capitalism. For Robinson (2000), “Western Marxism . . . has proven insufficiently radical to expose and root out the racialist order that contaminates its analytic and philosophic applications” (p. 317). Historians’ use of the racial capitalism approach is premised on the idea that Marxism does not adequately acknowledge slavery’s role in capitalism or the ongoing importance of colonialism and “primitive accumulation,” which Marx presumably relegated to the margins of his theory (Smallwood 2018). This is exactly why scholars in this tradition insist on the term racial capitalism: because Marxian theory fails to theorize race, we must add the qualifier race to the signifier capitalism.

But what if Marxian theory does in fact take into account race, slavery, imperialism, and colonialism, and proponents of the racial capitalism approach merely misread Marx? If so, the warrant, if not the entire premise, for Robinson’s and others’ work on racial capitalism would crater by an unfortunate misreading of Marxian theory. A number of scholars, in fact, already push against the notion that Marxist thought does not account for race, slavery, or colonialism. Drawing largely on Marx’s journalistic writings, they show that Marx not only discussed race, slavery, and colonialism but saw them as central for capitalism. According to this argument, Marx saw race as so crucial for capitalism that his theory saw the true proletariat as black, brown, and yellow—directly contrary to Robinson’s claim that Marxist theory only saw the white European proletariat as the true subject of history (Anderson 2010; Foster, Holleman, and Clark 2020; Ralph and Singhal 2019). If true, the racial capitalism literature is based on a “misguided reading of Marx” (Ralph and Singhal 2019:864).

How might this apparent aporia in Marxian theory be resolved, if at all? It is imperative here to register a distinction between Marx’s theory of capital and his theory of capitalism.4 The former is sketched in Marx’s mature social theory in Capital and related writings such as The Grundrisse (Postone 1996). These writings offer a formalized and abstract representation of the inner workings of capital, its accumulation, its contradictions, and its necessary demise through a series of central categories that capture the key elements of the capitalist system. At this level of abstraction, the main categories of the theory (e.g., “value,” “surplus value,” “concrete labor,” “abstract labor,” “capital,” “socially necessary labor time”) are devoid of any historical specificity or social content and as such can be applied to distinct historical phases or social formations (e.g., capitalism in the eighteenth-century transatlantic world or Russia in 1998, or the twenty-first-century global system). Categories of race, gender, or ethnicity are therefore not central, because they are too concrete.

Alternatively, a theory of capitalism refers to capitalist development and dynamics in their empirical specificity. It is meant to explain and describe specific capitalist formations and developments as they really exist in the world, not their abstract conceptual form. This theory can be extracted from Marx’s journalistic writings and other essays, and it is here where issues such as slavery and ethnicity arise: the essays refer to real events and pressing issues in actually existing capitalism, such as the Civil War or the Irish question (Anderson 2010). But these observations or statements on concrete processes and relations such as slavery in actually existing capitalism—that is, Marx’s theory of capitalism—do not disturb or reconfigure his theory of capital, which remains focused on the relations of wage labor induced to a highly abstract level from his analysis of textile production. If and when he did discuss things such as slavery, such as in “The Working Day” section in Capital, he treated slavery as a passing phase or outside capital’s inner logic, a sort of heuristic to better apprehend and illuminate the latter (Marx [1867] 1906:328–30; on slavery as a heuristic, see Smallwood 2018).

This distinction between Marx’s theory of capitalism and his theory of capital helps us better approach the debate generated by the racial capitalism literature. When Robinson or other proponents of the racial capitalism idea critique Marx’s theory for eliding or deliberately occluding race, slavery, and colonialism, they are critiquing his theory of capital, not his theory of capitalism. Here proponents of the racial capitalism approach are on solid ground. Marx’s theory of capitalism does take into account race, slavery, and colonialism, but his theory of capital renders these things marginal at best.5 Hence the warrant for the racial capitalism approach: because Marx’s theory of capital does not center race, the racial capitalism concept and the research and theorizing that go under its banner can fill the void. The concept may provide the basis for an alternative theory not only of racial capitalism but also of racialized capital.

Necessity, Contingency, and Difference

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

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

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

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

#### Materially---a confluence of statistical factors prove racial progress is possible and occurring due to successful institutional engagement

Hochschild 17 (Jennifer L. Hochschild , Professor of Government, African and African American Studies, and the Chair of the Department of Government (Harvard University), Chair in American Law and Governance at the Library of Congress, President of the American Political Science Association, “Left Pessimism and Political Science,” Perspectives on Politics, Volume 15, Issue 1, March 15th, p. 6-19, DOI: <https://doi.org/10.1017/S1537592716004102> \*\*modified to allow for more humanizing frames)

Is Pessimism the Only Sensible or Empirically Warranted Response in these Two Arenas? It is easy to find evidence to support pessimism about American racial dynamics or the societal deployment of genomic science. The United States is notorious for its racially- and ethnically-inflected poverty and excessive levels of incarceration; undocumented migrants live in legal limbo; new genomics techniques such as CRISPR-Cas9 tempt humankind into hubristic manipulation of nature, and scientists’ promises to cure cancer through genetics knowledge ring hollow to many. The question for this article is whether there are also strong grounds for optimism in my two illustrative realms, such that one could plausibly and persuasively choose to be “centered on advancement concerns” rather than “centered on security concerns.” The answer is yes. Again I can point only to illustrative, suggestive evidence. First, the gap between ~~blacks’~~ [black people’s] and whites’ life expectancy declined from seven years in 1990 to 3.4 years in 2014. That is an astonishing, perhaps unprecedented, rate of change given the usual slow pace of demographic transformation. It is important in itself, of course, and also as a summary statement about an array of other social phenomena in which racial disparities are declining. ~~Blacks~~ [Black people] are living longer mainly because of declining rates of homicides, HIV mortality, infant mortality, cancer and heart disease, and suicide among black men.19 A lot of things have to go right for a group’s life expectancy to rise rapidly. Second, applications for U.S. citizenship rose from the previous year in ten of the fifteen years from 2000 to 2015, while declining in four (and remaining stable in one). That is an important indicator of immigrant incorporation, and especially relevant to political scientists because “Hispanics and Asians who are naturalized citizens tend to have higher voter turnout rates than their U.S.-born counterparts.” 20 Third, non-white Americans themselves tend to feel pretty good about their lives. Gallup Poll asked in 2016, “Where do you expect your life satisfaction to be in five years?” If whites’ response is standardized at 1, then ~~blacks~~ [black people’s] are at 2.97, and Hispanics at 1.29. Only Asian Americans, at 0.97, were less optimistic than whites. Gallup also asked about one’s level of stress in the previous day. If whites are again standardized at 1, then ~~blacks~~ [black people] are at 0.48; Hispanics at 0.53; and Asian Americans at 0.75. Middle-class ~~blacks~~ [black people] were half as likely as middle class whites to report stress during the previous day.21 In the arena of genomics also, one can point to grounds for optimism rather than pessimism. The Innocence Project, “dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustice,” has enabled about 350 people to be released from prison. (Not so parenthetically, seven out of ten are African American or Latino, mostly poor men.) More extensive DNA testing might lead to many more exonerations; one careful analysis of serious crime convictions found that “in five percent of homicide and sexual assault cases DNA testing eliminated the convicted offender as the source of incriminating physical evidence.” Previous estimates had pegged the share of wrongful convictions at no more than one to two percent.22 More generally, “DNA profiling [of convicted felons] reduces the probability of future convictions by 17% for serious violent offenders and by 6% for serious property offenders .... These are likely underestimates of the true deterrent effect of DNA profiling.” 23 Genomic scientists can point to impressive successes with regard to Mendelian (single-gene) diseases, and they focus even more on diagnoses and cures yet to come. Eric Lander, director of the Broad Institute, likens the trajectory of genomic medicine to the development of medicine based on the germ theory of disease, which “took about 75 years. With genomics, we’re maybe halfway through that cycle.” In his view, “the rate of progress is just stunning. As costs continue to come down, we are entering a period where we are going to be able to get the complete catalogue of disease genes.” Cancer is a prime target, almost in sight:“If you understand that this is a game of probability, and there is only a finite number of cancer cells and each has only a certain chance of mutating, and if we can put together two or three independent attacks on the cancer cell, we win. If we invest vigorously in this and we attract the best young people into this field, we get it done in a generation. If we don’t, it takes two generations.” Lander is “not Pollyanna .... [I]t’s not for next year. We play for the long game. I don’t want to overpromise in the short term, but it is incredibly exciting if you take the 25-year view.” 24 This is a classic statement of optimism, or being centered on advancement concerns. It begins with expertise and perspective, sees dangers and weaknesses, and nonetheless asserts empirical grounds for faith. President Obama’s insistence that “if you had to choose a moment in human history to live ... you’d choose now” has the same quality. My point is not that left pessimism is wrong—only that there are grounds, perhaps equally strong, for left optimism. One can choose either, and then find good evidence for that choice. Why Is Left Pessimism Problematic? That wily politician, Barney Frank, offers the best answer from the vantage point of the public arena: “When you tell your supporters that nothing has gotten better, and that any concessions you’ve received are mere tokenism, you take away their incentive to stay mobilized. As for those you’re negotiating with, if you denigrate anything they concede as worthless, they will soon realize they can obtain the same response by giving nothing at all.” 25 One can offer the same type of answer from the vantage point of a teacher. Many of us have had the experience of teaching a course—about civil war, inequality and politics, environmental policy, or the meaning of liberty—only to have our students politely request on the last day of class some idea or piece of information about which they can feel good or which they can use in their public engagement. We need to offer answers. Optimism may also be associated with academic success; one careful study found that“although achievement in mathematics was most strongly related to prior achievement and grade level, optimism and pessimism were significant factors. In particular, students with a more generally pessimistic outlook on life had a lower level of achievement in mathematics over time.” 26A study of college students similarly found that “dispositional and academic optimism were associated with less chance of dropping out of college, as well as better motivation and adjustment. Academic optimism was also associated with higher grade point average.” 27 And for those of us of a certain age, it is heartening to discover that “after adjusting for covariates, the results suggested that greater optimism [among middle-aged, predominantly white Americans] was associated with greater high-density lipoprotein cholesterol and lower triglycerides .... In conclusion, ... optimism is associated with a healthy lipid profile; moreover, these associations can be explained, in part, by the presence of healthier behaviors and a lower body mass index.” 28

### AT: Structural Violence – 2AC

#### War turns structural violence---they ignore proximate cause of suffering if they don’t solve the case.

#### Don’t abandon capitalism---it’s the worst solution. Neoliberal success has dramatically improved quality of life.

Mark Budolfson 21. PhD in Philosophy. Assistant Professor in the Department of Environmental and Occupational Health and Justice at the Rutgers School of Public Health and Center for Population–Level Bioethics "Arguments for Well-Regulated Capitalism, and Implications for Global Ethics, Food, Environment, Climate Change, and Beyond". Cambridge Core. 5-7-2021. https://www-cambridge-org.proxy.library.emory.edu/core/journals/ethics-and-international-affairs/article/arguments-for-wellregulated-capitalism-and-implications-for-global-ethics-food-environment-climate-change-and-beyond/96F422D04E171EECDEF77312266AE9DD

Discourse on food ethics often advocates the anti-capitalist idea that we need less capitalism, less growth, and less globalization if we want to make the world a better and more equitable place, with arguments focused on applications to food, globalization, and a just society. For example, arguments for this anti-capitalist view are at the core of some chapters in nearly every handbook and edited volume in the rapidly expanding subdiscipline of food ethics. None of these volumes (or any article published in this subdiscipline broadly construed) focuses on a defense of globalized capitalism.1

More generally, discourse on global ethics, environment, and political theory in much of academia—and in society—increasingly features this anti-capitalist idea as well.2 The idea is especially prominent in discourse surrounding the environment, climate, and global poverty, where we face a nexus of problems of which capitalism is a key driver, including climate change, air and water pollution, the challenge of feeding the world, ensuring sustainable development for the world's poorest, and other interrelated challenges.

It is therefore important to ask whether this anti-capitalist idea is justified by reason and evidence that is as strong as the degree of confidence placed in it by activists and many commentators on food ethics, global ethics, and political theory, more generally.

In fact, many experts argue that this anti-capitalist idea is not supported by reason and argument and is actually wrong. The main contribution of this essay is to explain the structure of the leading arguments against the anti-capitalist idea, and in favor of the opposite conclusion. I begin by focusing on the general argument in favor of well-regulated globalized capitalism as the key to a just, flourishing, and environmentally healthy world. This is the most important of all of the arguments in terms of its consequences for health, wellbeing, and justice, and it is endorsed by experts in the empirically minded disciplines best placed to analyze the issue, including experts in long-run global development, human health, wellbeing, economics, law, public policy, and other related disciplines. On the basis of the arguments outlined below, well-regulated capitalism has been endorsed by recent Democratic presidents of the United States such as Barack Obama, and by progressive Nobel laureates who have devoted their lives to human development and more equitable societies, as well as by a wide range of experts in government and leading nongovernmental organizations.

The goal of this essay is to make the structure and importance of these arguments clear, and thereby highlight that discourse on global ethics and political theory should engage carefully with them. The goal is not to endorse them as necessarily sound and correct. The essay will begin by examining general arguments for and against capitalism, and then turn to implications for food, the environment, climate change, and beyond.

Arguments for and against Forms of Capitalism

The Argument against Capitalism

Capitalism is often argued to be a key driver of many of society's ills: inequalities, pollution, land use changes, and incentives that cause people to live differently than in their ideal dreams. Capitalism can sometimes deepen injustices. These negative consequences are easy to see—resting, as they do, at the center of many of society's greatest challenges.3

And at the same time, it is often difficult to see the positive consequences of capitalism.4 What are the positive consequences of allowing private interests to clear-cut forests and plant crops, especially if those private interests are rich multinational corporations and the forests are in poor, developing countries whose citizens do not receive the profits from deforestation? Why give private companies the right to exploit resources at all, since exploitation almost always has some negative consequences such as those listed above? These are the right questions to ask, and they highlight genuine challenges to capitalism. And in light of these challenges, it is reasonable to consider the possibility that perhaps a different economic system altogether would be more equitable and beneficial to the global population.

The Argument for Well-Regulated Capitalism

However, things are more complicated than the arguments above would suggest, and the benefits of capitalism, especially for the world's poorest and most vulnerable people, are in fact myriad and significant. In addition, as we will see in this section, many experts argue that capitalism is not the fundamental cause of the previously described problems but rather an essential component of the best solutions to them and of the best methods for promoting our goals of health, well-being, and justice.

To see where the defenders of capitalism are coming from, consider an analogy involving a response to a pandemic: if a country administered a rushed and untested vaccine to its population that ended up killing people, we would not say that vaccines were the problem. Instead, the problem would be the flawed and sloppy policies of vaccine implementation. Vaccines might easily remain absolutely essential to the correct response to such a pandemic and could also be essential to promoting health and flourishing, more generally.

The argument is similar with capitalism according to the leading mainstream arguments in favor of it: Capitalism is an essential part of the best society we could have, just like vaccines are an essential part of the best response to a pandemic such as COVID-19. But of course both capitalism and vaccines can be implemented poorly, and can even do harm, especially when combined with other incorrect policy decisions. But that does not mean that we should turn against them—quite the opposite. Instead, we should embrace them as essential to the best and most just outcomes for society, and educate ourselves and others on their importance and on how they must be properly designed and implemented with other policies in order to best help us all. In fact, the argument in favor of capitalism is even more dramatic because it claims that much more is at stake than even what is at stake in response to a global pandemic—what is at stake with capitalism is nothing less than whether the world's poorest and most vulnerable billion people will remain in conditions of poverty and oppression, or if they will instead finally gain access to what is minimally necessary for basic health and wellbeing and become increasingly affluent and empowered. The argument in favor of capitalism proceeds as follows:

Premise 1. Development and the past. Over the course of recorded human history, the majority of historical increases in health, wellbeing, and justice have occurred in the last two centuries, largely as a result of societies adopting or moving toward capitalism. Capitalism is a relevant cause of these improvements, in the sense that they could not have happened to such a degree if it were not for capitalism and would not have happened to the same degree under any alternative noncapitalist approach to structuring society. The argument in support of this premise relies on observed relationships across societies and centuries between indicators of degree of capitalism, wealth, investments in public goods, and outcomes for health, wellbeing, and justice, together with econometric analysis in support of the conclusion that the best explanation of these correlations and the underlying mechanism is that large increases in health, wellbeing, and justice are largely driven by increasing investments in public goods. The scale of increased wealth necessary to maximize these investments requires capitalism. Thus, as capitalist societies have become dramatically wealthier over the past hundred years (and wealthier than societies with alternative systems), this has allowed larger investments in public goods, which simply has not been possible in a sustained way in societies without the greater wealth that capitalism makes possible. Important investments in public goods include investments in basic medical knowledge, in health and nutrition programs, and in the institutional capacity and know-how to regulate society and capitalism itself. As a result, capitalism is a primary driver of positive outcomes in health and wellbeing (such as increased life expectancy, lowered child and maternal mortality, adequate calories per day, minimized infectious disease rates, a lower percentage and number of people in poverty, and more reported happiness);5 and in justice (such as reduced deaths from war and homicide; higher rankings in human rights indices; the reduced prevalence of racist, sexist, homophobic opinions in surveys; and higher literacy rates).6 These quantifiable positive consequences of global capitalism dramatically outweigh the negative consequences (such as deaths from pollution in the course of development), with the result that the net benefits from capitalism in terms of health, wellbeing, and justice have been greater than they would have been under any known noncapitalist approach to structuring society.7

Premise 2. Economics, ethics, and policy. Although capitalism has often been ill-regulated and therefore failed to maximize net benefits for health, wellbeing, and justice, it can become well-regulated so that it maximizes these societal goals, by including mechanisms identified by economists and other policy experts that do the following:

* optimally8 regulate negative effects such as pollution and monopoly power, and invest in public goods such as education, basic healthcare, and fundamental research including biomedical knowledge (more generally, policies that correct the failures of free markets that economists have long recognized will arise from “externalities” in the absence of regulation);9
* ensure equity and distributive justice (for example, via wealth redistribution);10
* ensure basic rights, justice, and the rule of law independent of the market (for example, by an independent judiciary, bill of rights, property rights, and redistribution and other legislation to correct historical injustices due to colonialism, racism, and correct current and historical distortions that have prevented markets from being fair);11 and
* ensure that there is no alternative way of structuring society that is more efficient or better promotes the equity, justice, and fairness goals outlined above (by allowing free exchange given the regulations mentioned).12

To summarize the implication of the first two premises, well-regulated capitalism is essential to best achieving our ethical goals—which is true even though capitalism has certainly not always been well regulated historically. Society can still do much better and remove the large deficits in terms of health, wellbeing, and justice that exist under the current inferior and imperfect versions of capitalism.

Premise 3. Development and the future. If the global spread of capitalism is allowed to continue, desperate poverty can be essentially eliminated in our lifetimes. Furthermore, this can be accomplished faster and in a more just way via well-regulated global capitalism than by any alternatives. If we instead opt for less capitalism, less growth, and less globalization, then desperate poverty will continue to exist for a significant portion of the world's population into the further future, and the world will be a worse and less equitable place than it would have been with more capitalism. For example, in a world with less capitalism, there would be more overpopulation, food insecurity, air pollution, ill health, injustice, and other problems. In part, this is because of the factors identified by premise 1, which connect a turn away from capitalism with a turn away from continuing improvements in health, wellbeing, and justice, especially for the developing world. In addition, fertility declines are also a consequence of increased wealth, and the size of the population is a primary determinant of food demand and other environmental stressors.13 Finally, as discussed at length in the next section of the essay, capitalism can be naturally combined with optimal environmental regulations.14 Even bracketing anything like optimal regulation, it remains true that sufficiently wealthy nations reduce environmental degradation as they become wealthier, whereas developing nations that are nearing peak degradation will remain stuck at the worst levels of degradation if we stall growth, rather than allowing them to transition to less and less degradation in the future via capitalism and economic growth.15 In contrast, well-regulated capitalism is a key part of the best way of coping with these problems, as well as a key part of dealing with climate change, global food production, and other specific challenges, as argued at length in the next section. Here it is important to stress that we should favor well-regulated capitalism that includes correct investments in public goods over other capitalist systems such as the neoliberalism of the recent past that promoted inadequately regulated capitalism with inadequate concern for externalities, equity, and background distortions and injustices.16

Conclusion. Therefore, we should be in favor of capitalism over noncapitalism, and we should especially favor well-regulated capitalism, which is the ethically optimal economic system and is essential to any just basic structure for society.

This argument is impressive because, as stated earlier in the essay, it is based on evidence that is so striking that it leads a bipartisan range of open-minded thinkers and activists to endorse well-regulated capitalism, including many of those who were not initially attracted to the view because of a reasonable concern for the societal ills with which we began. To better understand why such a range of thinkers could agree that well-regulated capitalism is best, it may help to clarify some things that are not assumed or implied by the argument for it, which could be invoked by other bad arguments for capitalism.

One thing the argument above does not assume is that health, wellbeing, or justice are the same thing as wealth, because, in fact, they are not. Instead, the argument above relies on well-accepted, measurable indicators of health and wellbeing, such as increased lifespan; decreased early childhood mortality; adequate nutrition; and other empirically measurable leading indicators of health, wellbeing, and justice.17 Similarly, the argument that capitalism promotes justice, peace, freedom, human rights, and tolerance relies on empirical metrics for each of these.18

Furthermore, the argument does not assume that because these indicators of health, wellbeing, and justice are highly correlated with high degrees of capitalism, that therefore capitalism is the direct cause of these good outcomes. Rather, the analyses suggest instead that something other than capitalism is the direct cause of societal improvements (such as improvements in knowledge and technology, public infrastructure, and good governance), and that capitalism is simply a necessary condition for these improvements to happen.19 In other words, the richer a society is, the more it is able to invest in all of these and other things that are the direct causes of health, wellbeing, and justice. But, to maximize investment in these things societies need well-regulated capitalism.

As part of these analyses, it is often stressed that current forms of capitalism around the world are highly defective and must be reformed in the direction of well-regulated capitalism because they lack investments in public goods, such as basic knowledge, healthcare, nutrition, other safety nets, and good governance.20 In this way, an argument for a particular kind of progressive reformism is an essential part of the analyses that lead many to endorse the more general argument for well-regulated capitalism.

Although these analyses are nuanced, and appropriately so, it remains the case that the things that directly lead to health, wellbeing, and justice require resources, and the best path toward generating those resources is well-regulated capitalism. And on the flip side, according to the analyses behind premise 1 described above, an anti-capitalist system would not produce the resources that are needed, and would thus be a disaster, especially for the poorest billion people who are most desperately in need of the resources that capitalism can create and direct, to escape from extreme poverty.21

#### The alt’s profoundly unethical

Piper '21 [Kelsey; 8/2/21; staff writer at Vox; "Can we save the planet by shrinking the economy?" https://www.vox.com/future-perfect/22408556/save-planet-shrink-economy-degrowth/]

Most of the world is very poor. Billions of people go hungry, can’t afford a doctor when they get sick, don’t have adequate shelter and sanitation, and struggle to exercise the freedoms essential to a good life because of material deprivation.

But for all the immiseration around us, one thing is undeniable: For the past several centuries — and especially for the past 70 years, since the end of World War II — the world has been getting much richer.

That economic boom means a lot of things. It means cancer treatments and neonatal intensive care units and smallpox vaccines and insulin.

It means, in many parts of the world, houses have indoor plumbing and gas heating and electricity.

It means that infant mortality is down and life expectancies are longer.

But an increasingly wealthy world also means we eat more meat, mostly from factory-farmed animals. It means we emit lots more greenhouse gases. It means that consumers in developed countries buy a lot and throw away a lot.

In other words, it means a lot of good things and certainly some bad things as well.

Mainstream climate and environmental policy has developed over the years with a certain assumption — that we can get rid of the bad things while still preserving the good things. That is, it’s sought to figure out how to reduce carbon emissions, preserve ecosystems, and save endangered species while continuing to improve material living conditions for everyone in the world.

But to a vocal slice of climate activists, that approach seems increasingly doomed. The degrowth movement, as it’s called, argues that humanity can’t keep growing without driving humanity into climate catastrophe. The only solution, the argument goes, is an extreme transformation of our way of life — a transition away from treating economic growth as a policy priority to an acceptance of shrinking GDP as a prerequisite to saving the planet.

At the core of degrowth is the climate crisis. Degrowth’s proponents argue that to save Earth, humans need to shrink global economic activity, because at our current levels of consumption, the world won’t hit the IPCC target of stabilizing global temperatures at no more than 1.5 degrees of warming. The degrowth movement argues that climate change should prompt a radical rethinking of economic growth, and policymakers serious about climate change should try to build a livable world without economic growth fueling it.

It’s a bold, even romantic vision. But there are two problems with it: It doesn’t add up — and it would be nearly impossible to implement.

Addressing climate change will take genuinely radical changes to how our society works. Stirring as it might be to some, though, degrowth’s radicalism won’t fix the climate. Degrowth is most compelling as a personal ethos, a lens on your consumption habits, a way of life. What it’s not is a serious policy program to solve climate change, especially in a world where billions still live in poverty.

The basics of degrowth

Pinning down what degrowth means can be tricky because degrowthers often differ on details. But there are some common threads to their thought.

In general, degrowthers believe that in the modern world, economic growth has become unmoored from improvements in the human condition.

Jason Hickel, an anthropologist at the London School of Economics and the author of Less Is More: How Degrowth Will Save the World, has emerged as one of the leading spokespeople for the movement. To Hickel, the case for degrowth goes like this: The world is producing too much greenhouse gases. It is also overfishing, is overpolluting, is unsustainable in a dozen ways, from deforestation to plastic accumulating in the oceans.

Scientists have made impressive progress on technologies that, he argues, should have been sufficient to address the climate crisis — think solar panels, meat alternatives, eco-friendly houses. But because wealthy societies are so focused on growing the economy, those gains have been immediately plowed back into the economy, producing more stuff for the same ecological footprint, yes, but not actually shrinking the ecological footprint.

Hickel argues that this problem is unsolvable within our current framework. “In a growth-oriented economy,” he writes in Less Is More, “efficiency improvements that could help us reduce our impact are harnessed instead to advance the objectives of growth — to pull ever-larger swaths of nature into circuits of extraction and production. It’s not our technology that’s the problem. It’s growth.”

His solution? To abandon the lodestar of economic policy in nearly every country, which is to aim for economic growth over time, increasing wealth per person and expanding the ability of their citizens to purchase the things they want and need. Instead, Hickel argues, rich countries should focus on getting emissions to zero — even if the result is a much-contracted economy.

If that sounds unappealing, he devoted much of the book — and much of our interview — to arguing that it wouldn’t be. He points out that some countries, like the United States, are rich but get very little for their spending, in terms of national well-being; poorer countries like Spain have better health care systems. He argues that current levels of well-being could be maintained at a tenth of Finland’s current GDP — assuming that society also adopted wide-scale redistribution and socialist labor policies.

At the heart of Hickel’s argument is an idea that divides degrowthers and their critics: the concept of “decoupling” growth from environmental impact. Hickel and his fellow degrowthers are skeptical that economic growth as we know it can ever truly be achieved without accompanying growth in emissions.

But critics argue that not only is it possible — it’s already been happening. For the past decade, as many countries have transitioned to green energy, they have successfully seen their emissions shrink while their GDP has grown.

“There have been really big changes since 2005,” when people were debating whether decoupling was even possible, Zeke Hausfather, a climate scientist at the Breakthrough Institute, told me. “Green energy has gotten cheap. Solar power is the cheapest energy at the margins in every country today. Global coal use has peaked.” His research finds evidence of “absolute decoupling” — emissions shrinking while GDP grows — in 32 countries, including the United States, the United Kingdom, and Germany.

Degrowthers I spoke to don’t dispute that decoupling is possible. But they argue it won’t be enough to shrink emissions as rapidly as they need to. And there’s a compelling bit of evidence for that view: Even as some countries have decoupled, others have increased emissions, and overall atmospheric carbon is at its highest level ever recorded.

Where an optimist might see, in the decoupling of the past few decades, signs that growth and climate solutions can coexist, a pessimist might find the degrowth diagnosis more persuasive: that our growth-focused society clearly isn’t up to the task of solving climate change.

The pessimists have picked up momentum of late. It’s true, in one sense, that degrowth is a somewhat fringe idea: No politician has endorsed it, and no serious policy proposals based on it have been put forth. But degrowth has nonetheless drawn sympathy in some quarters — including among prominent climate thinkers.

Steven Chu, who served as secretary of energy under President Obama, has endorsed it, arguing, “You have to design an economy based on no growth or even shrinking growth.”

More than 11,000 scientists signed William Ripple’s 2019 letter “World Scientists’ Warning of a Climate Emergency,” which argues “our goals need to shift from GDP growth and the pursuit of affluence toward sustaining ecosystems and improving human well-being by prioritizing basic needs and reducing inequality.”

And a recent paper in Nature explored how a “degrowth” of 0.5 percent of GDP per year might interact with climate and emissions targets, arguing that while “substantial challenges remain regarding political feasibility,” such approaches should be “thoroughly considered.”

The tension at the heart of degrowth: Can we fix global poverty without economic growth?

One big problem with degrowth is this simple fact: In the coming decades, most carbon emissions won’t be coming from rich countries like the US — they’ll be happening in newly middle-income countries, like India, China, or Indonesia. Already, developing nations account for 63 percent of emissions, and they’re expected to account for even more as they develop further and as the rich world decarbonizes.

Even if emissions in rich countries go to zero very soon, climate change is set to worsen as poorer countries increase their own emissions.

That will, of course, have deeply negative climate impacts. But the alternative is a nonstarter — should the world really prioritize curbing emissions and economic growth if it meant suppressing the growth of those countries?

Degrowthers see no dilemma here. What Hickel envisions is global movement in two directions: Poor countries could develop up to a certain level of prosperity and then stop; rich countries could develop down to that level and then stop. Thus, climate catastrophe could be averted, all while making the world’s poor more prosperous.

“Rich countries urgently need to reduce their excess energy and resource use to sustainable levels so our sisters and brothers in the global South can live well too,” Hickel put it. “We live on an abundant planet and we can all flourish on it together, but to do so we have to share it more fairly, and build economies that are designed around meeting human needs rather than around perpetual growth.”

From a climate change perspective, though, there’s a problem. First, it means that degrowth would do nothing about the bulk of emissions, which are occurring in developing countries.

Second, the global economy is more interconnected than Hickel implies. When Covid-19 hit, poor countries were devastated not just by the virus but by the aftershocks of virus-induced slowdowns in consumption in rich countries.

There’s some genuine appeal to the idea of an end to “consumerism,” but the pandemic offered a taste of how a sudden drop in rich-world consumption would actually affect the developing world. Covid-19 dramatically curtailed Western imports and tourism for a time. The consequences in poor countries were devastating. Hunger rose, and child mortality followed.

Covid-19, of course, wreaked direct economic havoc at the same time, with lockdowns having an especially negative impact on some poor countries; the effects of the pandemic and international demand shock were combined, and in some cases they’re hard to separate. But the United Nations, the World Bank, and expert analyses point to the decline in global consumption as a significant part of the picture.

Degrowthers reject this concern on two fronts: First, they argue that a sustained, deliberate reduction in consumption wouldn’t be anything like a recession. Recessions, they agree, are really bad, but that’s because consumption falls in affected sectors, instead of being targeted at things that don’t improve well-being. Degrowth, they say, would be different.

Second, they contend that there is some path to economic growth in poor countries that doesn’t rely on trade with rich ones — certainly some countries managed economic growth when the whole world was poor, after all.

Hickel’s perspective is that most trade between rich and poor countries is extractive, not mutually beneficial — and that maybe when that dynamic ceases, poor countries will have the chance for the catch-up growth they merit. That’s one take. But it means that degrowth’s case for not crushing the poor world is predicated on a speculative take on how those countries can grow — one that democratically elected leaders in those countries largely don’t share.

What GDP doesn’t capture — and what it can tell us

In a way, the debate over degrowth is a debate over the meaning of one economic indicator: gross domestic product (GDP).

GDP measures the transactions within an economy — all the occasions when money changes hands in exchange for goods and services. It’s not wealth, but it’s one of the primary ways we measure wealth.

It certainly doesn’t capture everything of value. When parents spend a quiet weekend at home teaching their children to read, for example, nothing GDP-generating has happened — but value has certainly been created.

Degrowth articles burst with such examples. GDP, they love to point out, includes the production of things like nerve gas, even though that has no social value. And it doesn’t include storytelling, singing, gardening, and other simple human pleasures.

“If our washing machines, fridges, and phones lasted twice as long, we would consume half as many (thus the output of those industries would decline), but with zero reduction in our access to those goods,” Hickel told me. If everyone worked half the hours they currently do, and made half the income, they might mostly be better off — at least, assuming that their basic needs were still met.

“We propose policies like a living wage, a maximum income ratio, wealth taxes, etc. to accomplish this,” Hickel told me. “Given all of this, the language of poverty really gets it wrong: longer-lasting products, living wages, shorter working weeks, better access to public services and affordable housing — we are calling for the opposite of poverty. Yes, industries like SUVs and fast fashion would decline, but that doesn’t mean poverty. We can replace them with public transportation and longer-lasting fashion, thus meeting everyone’s needs.”

There’s a lot of speculation here, and a lot of what degrowth’s critics would call hand-waving. Degrowth is fundamentally premised on the claim that we can cease to focus on growth while getting better than ever at addressing human needs. If that’s true, then that would certainly be great news.

But in many ways, it’s a vision more wildly optimistic — disconnected from actual policy results — than any of the more standard “sustainable development” models degrowthers criticize for being out of touch.

First, in the world today, there’s an extremely strong association between growth and welfare outcomes of every kind. GDP, while imperfect, is a better predictor of a country’s welfare state, outcomes for poor citizens in that country, and well-being measures like leisure time and life expectancy than any other measure.

“GDP does leave out non-commercialized activities that are welfare-enhancing,” economist Branko Milanovic writes in a rebuttal of degrowth:

It is, like every other measure, imperfect and one-dimensional. But ... it is imperfect at the edges while fairly accurate overall. Richer countries are countries that are generally better-off in almost all metrics, from education, life expectancy, child mortality to women’s employment etc. Not only that: richer people are also on average healthier, better educated, and happier. Income indeed buys you health and happiness. (It does not guarantee that you are a better person; but that’s a different topic.) The metric of income or GDP is strongly associated with positive outcomes, whether we compare countries to each other, or people (within a country) to each other.

The things degrowthers care about — leisure time, health care, life expectancy — are strongly correlated with societal wealth. The generosity of a welfare state and the availability of transfers to a state’s poorest people are also strongly correlated with societal wealth. Innovation, discovery, invention, and medical technology improvements are also strongly correlated with societal wealth.

The strong correlation between child mortality and GDP per capita is apparent on the above graph. There are some outliers — some countries outperform or underperform their GDP somewhat, in terms of preventing child deaths — but in general, wealth strongly predicts child survival. No single, simple medical intervention causes the difference. Wealthier societies on average get better health outcomes across the board.

This graph looks at child mortality not just by comparing rich countries to poor ones but also by comparing countries over time, as they get richer: Getting richer improves outcomes for children.

Leisure time, too, has increased — and hours worked have declined — as the world has gotten wealthier.

It might be possible in principle to do better — to decouple, if you will, health and well-being from access to material resources, so that everyone is well-off with many fewer resources.

But the examples degrowthers point to remain speculative ones; if we ought to be skeptical, as degrowthers argue we should be, about the decoupling of wealth from ecological impact, we ought to be at least as skeptical about the prospects of decoupling wealth from living standards.

“In the end, economic growth is about the production of stuff that people need and then the consumption of those things by the people who need it,” Max Roser at Our World in Data, a research institute focused on finding, visualizing, and communicating historical economic and health data, told me. He added:

The money aspect, and the abstract concept of GDP, distract us and make it less obvious what it’s actually about. People want to have enough food, they need to go to the doctor, they need childcare, they want a good education. People need lots of stuff, and one thing that people care about are goods and services, and they need to be produced, and economic growth is about an increase in the quality and quantity of the goods and services that people need.

There’s also the knotty problem of who gets to decide which goods and services people choose to spend their money on. Many of the climate scientists I spoke to shared Hickel’s impatience for many specific carbon-intensive modern industries. “I’m not going to defend bitcoin,” the Breakthrough Institute’s Hausfather told me. (The cryptocurrency has attracted intense criticism for being astoundingly carbon-intensive.)

But there is a lot in between bitcoin and basic subsistence needs. And “enough for everyone who needs it” inherently requires value judgments about what people really need, and what things they value that are frivolous luxuries. That’s why so many anti-poverty programs have moved away from giving people “what they need” toward just giving them cash — that is, giving them wealth, which they can choose to spend however they please.

“Even poor people have so many needs for goods and services that you can’t possibly put them on a list and say, ‘Now we’re done here,’” Roser told me. “That’s the beauty of money, that you can just go out there and get what you need rather than what some researcher determines are your needs.”

Degrowth is unrealistic — and gaining traction

As a policy program, degrowth suffers from being both too radical and not radical enough.

There’s a lot of broad-brush policy prescriptions in the degrowth lit, but those details never really add up.

While it’s not a short book, Less Is More feels surprisingly sparse when it comes to envisioning how the changes it recommends could be brought about. The chapter on solutions recommends cutting the workweek and changing tax policy — two solid proposals — but then rounds that out by recommending ending technological obsolescence, advertising, food waste, and student debt.

I’m not particularly opposed to those policies. But they seem laughably inadequate for the magnitude of the task at hand: confronting the climate crisis. Degrowth successfully persuades that guiding humanity and our planet through the 21st century will be really, really hard — but not in a way degrowth particularly solves.

Where degrowth literature is relentlessly pessimistic about the prospect of our problems being solved under our current economic system, it turns oddly optimistic about the prospect that they’ll be solved once we embrace a different way of viewing wealth and progress. If cutting carbon emissions fast enough to matter requires shrinking the global economy by 0.5 percent a year indefinitely, starting right now, as the Nature paper estimates, that’ll take policy measures much larger and more ambitious than any proposed in Less Is More.

“If we are to avert catastrophic warming, we have to lower carbon emissions by a factor of two within the next 10 years. I find it highly implausible that capitalism/market economics will be abandoned by the world on that time frame,” Pennsylvania State University climatologist Michael Mann told me. “That means we have to act on the climate crisis within the framework of the current system.”

In that sense, there’s actually something anti-radical about any climate plan so radical that it can’t be concretely brought about in the next decade.

And yet, implausible as it is, degrowth is gaining a foothold in intellectual and policy circles. What accounts for its seemingly growing popularity? This was a question that puzzled me until I heard the same answer from one degrowth advocate and one opponent: that it’s not, really, exactly about climate.

“It started in the 1990s in France, picking up on radical European politics in the 1970s,” Giorgos Kallis, a researcher studying degrowth at the Universitat Autònoma de Barcelona, told me. “There was an in-between political space there — radical greens, putting much more emphasis on localized production, emphasis on conviviality and autonomy. This is a discourse that comes from them. It wasn’t just about avoiding a particular environmental problem. It was a holistic proposal.”

That was also the diagnosis of Zion Lights, a former spokesperson for Extinction Rebellion, who has become one of the climate movement’s internal critics, arguing that the movement focuses too much on environmentalist-friendly proposals that have nothing to do with climate.

“It has become difficult to talk about making energy policies for combating climate change, for example, without being told that such thinking is actually irrelevant because it doesn’t involve system change,” she recently argued. “We need cheap, clean energy at scale and we need it now.”

In that sense, a good analogy for degrowth might actually be locavorism — the movement that focuses on eating food grown locally. It’s popular with environmentalists, both those whose convictions are about climate change and those who long for a return to the land. Its actual climate impacts are limited or even negative — for some products, it’s better for them to be grown in their optimal environment even with carbon-intensive shipping — and it definitely does less for the climate than, for example, going vegan. But it retains its allure.

How to fight climate change while building good human societies

Degrowth’s radicalism isn’t where I part ways with it: The future will almost certainly require us to eat much less meat, dramatically change land use, and potentially invest a significant chunk of society’s resources in mitigation indefinitely.

But I don’t tend to see such efforts as fundamentally futile. Degrowthers do — even when there have been significant successes.

Climate scientists have spent a long time warning the world about climate change, but they nonetheless tend to sound a more optimistic note than degrowthers like Hickel. “It’s undoubtedly a monumental challenge,” Mann told me. “We have the technology to solve the problem — renewable energy, smart grid technology, and existing energy storage. We just need the political will to act.”

Take solar panels. Two decades ago, cheap solar panels were just a dream. Now they’re everywhere and have become a crucial tool in the fight against climate change.

Not only that, solar panels have democratized electricity. Just one small-scale instance: In rural Kenya, you can see donkeys saddled with solar panels so that farmers can charge their phones. And there are many such examples that count as a win for both human progress and our fight against climate change.

It should go without saying that since rich governments got us into this climate mess, they should be at the forefront of getting us out of it. We need massive investments in carbon capture, green energy, plant-based meat, mitigation, and straight-up cash transfers to poor countries disproportionately affected by the climate crisis.

Many of the researchers I spoke to were open to the idea that in the long run, humanity would need to rethink many of our cherished assumptions about how economies work, in order to build a civilization that can flourish for thousands or millions of years. They didn’t reject degrowth as a philosophical contribution to the question of what future human civilizations should care about.

But such articulations of different philosophies of human flourishing should not be mistaken for public policy.

We don’t have very long, and we need to decarbonize quickly. We have technologies that have made a big difference already, and they must be made available on an unprecedented scale. We have more speculative solutions, technological and societal, and we should be prepared to try those, too. The scale of the problem is such that we need to act now — and we need to be clear-eyed about which ideas truly move the needle.

### AT: War---2AC

#### Cap solves war and there’s no internal link to imperialism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### AI Turn---2AC

#### Centralized planning fails, even with perfect tech---but the alt ensures digital authoritarianism

Bennett ’22 [Michael Timothy and Sean Welsh; Jan 16; PHD student who works in AI research at the ANU; author and PhD in philosophy; Quillette, “Will AI Spell the End of Capitalism?,” https://quillette.com/2022/01/16/ai-and-the-end-of-capitalism/]

As is commonly said, artificial intelligence is brittle (but fast) whereas human intelligence is robust (but slow). If the task is to land a drone, provide song recommendations, or even predict protein folding, then mimicry can work well, given a sufficiently varied quantity of training data. If, on the other hand, rationality or the ability to provide nuanced reasoning for past decisions is required, mimicry flops. The ability to deal with the unexpected is one of the great strengths of Homo sapiens.

Feng’s claim is simply that AI oligarchs are bad and the only credible fix is a “socialist market economy” governed by a Marxist one-party state. This is a false dichotomy; our choice is not between these two extremes. We agree that AI oligarchs are an unattractive prospect. However, there are existing remedies for cartels, monopolies, and harmful AI products in the pluralist West. Targeted regulation is a better fix for capitalism’s defects than a revolution led by an alliance of workers and peasants. As a result of Frances Haugen’s testimony, many in the US Congress are looking to clip the wings of social media. The EU has led the world in regulating AI products, introducing rights to explanations, rights to be forgotten, and rights to data privacy. The Australian government has released draft legislation to expose anonymous trolls to defamation actions by removing the “platform” shield of social media and making them “publishers” accountable for the views their users post just like traditional media. The “wild west” days of the information age are over.

But Feng offers a typically Marxist “all or nothing” argument. To fix the problems of competitive capitalism, his solution is a Marxist political monopoly based on the revolutionary expropriation of the expropriators. His argument is unconvincing because it is based on a hopelessly dated caricature of capitalism. “Laissez-faire capitalism as we have known it,” he says, “can lead nowhere but to a dictatorship of AI oligarchs who gather rents because the intellectual property they own rules over the means of production.”

The obvious problem with this argument is that laissez-faire capitalism is extinct, long since abandoned in favour of regulation, anti-trust legislation, and redistribution through the welfare state. Feng overstates the market power of the AI oligarchs, most of whom make their money selling ads in a competitive market. He says nothing about the coercive power of a political monopoly, that can silence policy competition by throwing it into the gulag.

The most sinister aspect of current AI is what a one-party state can do with it. Silicon Valley has given China the technical tools to set up the world of 1984. Now the party telescreen can monitor the likes of Winston Smith 24/7. Instead of a screen on the wall, it’s the mobile phone in your pocket connected to the Internet that can be used to track you and monitor what you click on, who and what you message, and keep you and all your fellow citizens under constant surveillance for “counter-revolutionary” views. In China, the Internet and social media have evolved to be a tyrant’s dream. Comrade political officers in technology firms monitor online posts for “objectionable” material and have unlimited powers of “moderation.”

The Achilles heel of this political strategy is that it creates a culture in which people are afraid to think and speak freely. When you have to filter every word you say in case it offends the powers that be, you are strongly motivated to avoid risky creative thinking. In a society where the state can control everything and purge celebrity and wealth, talented people vote with their feet and migrate to places where they can get rich and famous and say what they think. Those that remain settle for the safety of government-approved groupthink. As a result of this systemic dampening of creativity, the economy stagnates in the long run.

Aspects of contemporary AI theory align with the intuitions of Karl Popper as expressed in The Open Society and Its Enemies. Driven mostly by reaction to the totalitarian horrors of fascism and communism in World War II, Popper intuited that social truth is best served by policy competition and piecemeal social engineering not policy monopoly. Contemporary AI, in the form of discussion of the exploration/exploitation tradeoff in reinforcement learning (a variant of ML), explains why.

Exploitation is a strategy whereby the AI takes a decision assumed to be optimal based on data observed to date. In essence, it is about trusting past data to be a reliable guide to the future, or at least today. Exploration, by contrast, is a strategy that consists of not taking the decision that seems to be optimal based on existing past data. The AI agent bets on the fact that observed data are not yet sufficient to correctly identify the best option. Obviously, exploitation works better in closed and well-understood systems, but exploration is a better bet in those that are open and poorly understood.

Even if decisions are made by the most generally intelligent AI possible, the optimal strategy for that AI is to subdivide tasks, duplicate itself, and specialize for local conditions. In other words, a swarm of individuals each making their own choices can learn from the best of what its population tries. If all individuals are constrained, then the ability of the swarm to learn and change is crippled. There are exceptions, particularly where the cost of an individual failing is so high it is comparable to the whole population failing (for instance, letting more people have access to a button that ends the world is worse than letting fewer people have access to this button). But, generally speaking, more distributed control consistently beats more centralised control. By employing many different, often contradictory policies at once, we constantly explore as we exploit. Applying this recent technical insight retrospectively to history, it explains the sustained stagnation of Marxist economies.

Presently, no functioning state has either completely central or distributed control. We are all somewhere in between. In the mid-19th century, when The Communist Manifesto was published, there was hardly any spending on social services. Income tax was three percent in the UK, there was no such thing as company tax, and the welfare state did not exist. What existed was the parish and the poorhouse. In the days of Gladstone and Disraeli, with property-based suffrage and a budget than went mostly on the Army, the Navy, and servicing debt incurred during the Crimean War, one could plausibly claim, as Marx and Engels did, that “the executive of the modern state was nothing but a committee for managing the common affairs of the bourgeoisie.” In the 19th century, spending by the UK government was less than a 10th of GDP. Today it is a third. Half the UK budget, one-sixth of GDP, goes on health, education, and welfare.

A degree of central planning is desirable to provide infrastructure, to support basic research, and to ensure that everyone has access to education and health services. Regulation is required to enforce contracts, to facilitate cooperation, to provide minimum standards for products and services, and to enforce rules on safety, pollution, and so on. However, as an overall policy, maximising individual autonomy within reason, erring towards computational efficiency and distributed control, will yield dramatically better outcomes than central control by the AI of a one-party state.

Central planning ignores what is arguably the greatest advantage of distributed control and local adaptation: error correction. It also ignores the fact that “fairness” is notoriously hard to define in AI terms, assuming resources are to be fairly allocated. A central planner might select what is best for an average human, but what is best is often far from obvious. Humans are quite dissimilar from one another. We share goals only in the most general sense (for example, we seek to avoid pain, find food, take shelter, and so forth). We rarely agree on what we want to do today or any other day, and our beliefs about how to achieve things are often inconsistent.

The best possible central planner, mathematically, is a pareto-optimal super-intelligence. This is a software agent that learns faster to predict more accurately than any other agent, on average across all possible tasks. This is the theoretical upper limit of intelligence (allowing for debate over the exact definition of intelligence itself). However, even this theoretical perfection will always be out-performed by those with a more specifically relevant inductive bias toward a given task (those who are less intelligent in general, but more suited to the task at hand). In other words, even the most intelligent being possible would make mistakes when compared with the possibilities presented by distributed control, localised adaptation, and selective evolution. The same goes not just for correcting mistakes, but for improving our lot in life. Every beneficial innovation in history was an instance of an individual breaking ranks to correct a perceived flaw in the norm, to adapt to the specific situation at hand. Innovation requires disobedience. To centralise control is to encourage stagnation.

The problem with state-run monopolies is that they are inherently inefficient because they lack the error correction provided by competition. Markets provide error correction in the form of people deciding products suck and buying elsewhere. In the realm of ideas, error correction occurs when people say a party’s policy does not work, but this option is removed when free speech is curtailed. In China, those who criticise government policy (or government officials) disappear and get silenced. Only a lucky few like Peng Shuai have global profiles high enough to get noticed. Notwithstanding their claims about “participatory” democracy, in the one-party state, dissidents and innovators are purged in darkness.

The history of the communist world is replete with economic disaster. Millions died as a result of famines caused by Stalin and Mao. Marxist doctrine underlies the economic underperformance of China compared to Taiwan. AI cannot save Marxism, but it can be used by Marxists to serve their agendas of surveillance and social control. AI can be used to bring about the death of democracy and enable the rule of a digital Big Brother.

#### Extinction and turns structural violence.

Jain ’19 [Ash; October; Senior Fellow and Coordinator of the Democratic Order Initiative and D10 Strategy Forum at the Atlantic Council, Former Adjunct Professor at Georgetown University’s School of Foreign Service, JD and MS Degree in Foreign Service from Georgetown University; Atlantic Council Strategy Paper, “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf]

Still, it is doubtful whether this dramatic improvement in the human condition could have been achieved in the absence of the rules-based international system. Moreover, many of these other driving forces are themselves constitutive of, if not partially the result of, that system. Global bipolarity, and then unipolarity with the United States at its center, was critical for the postwar development of a rules-based system, which may not have been possible in a more multipolar distribution of international power, or with a non-democratic hegemon at the system’s apex. The splitting of the atom could have resulted in widespread nuclear-weapons proliferation and nuclear use had it not been for the NPT and extended US nuclear deterrence in Europe and Asia.18 The most important technological advances for globalization, including the Internet, occurred and flourished in the free world, defended by the United States and its democratic allies and partners.19 Finally, the United States and its democratic partners, along with nongovernmental organizations and individuals operating in these states, were the most important norm entrepreneurs propagating global norms around issues of good governance, democracy, and human rights.

In sum, the rules-based international system that has been the defining feature of global order for the past seventy years has coincided with—and was almost certainly essential in bringing about—the most secure, prosperous, and well-governed world humanity has ever known.

Despite this record of unprecedented and enduring success, the rules-based international system is currently besieged by a number of challenges unleashed by rapid and dramatic global change. Understanding the current strategic context, including global trends and threats both external and internal to the system’s democratic core, is a necessary first step toward devising a strategy to revitalize, adapt, and defend a rules-based international system.

Global Diffusion of Power. The international distribution of power, as defined by relative economic weight, is shifting away from the founders of the post-World War II system to other emerging economies. As recently as the 1990s, nearly 70 percent of global economic activity occurred in Europe and the Americas. By the 2040s, that number is expected to drop to roughly 40 percent. At the same time, the Asian share of global GDP will increase from 32 percent at present to 53 percent in 2050, meaning that, by that time, the majority of all economic activity on Earth will occur in Asia.

While the United States remains the world’s most powerful state militarily and economically, it is declining relative to other rising powers, particularly China. When corrected for purchasing-power parity (PPP), China’s GDP has already surpassed the United States. The better metric for international power and influence, however, is real GDP; here, too, the US advantage is narrowing, but more slowly.21 At the conclusion of World War II, the United States possessed roughly 50 percent of global GDP.22 From the 1970s through today, that number has held steady at roughly 25 percent.23 Despite a common misperception, the United States’ share of global power is not declining in absolute terms.

Rather, other powers—especially China—are rising. China’s share of global GDP rose from 4.6 percent in the 1990s to 15 percent today.24 Many economists predict that China could surpass the United States as the world’s largest economy by 2030. It is noteworthy, however, that in 2009, economists predicted that this transition would happen by 2020. That date has been pushed back a decade as Chinese growth has slowed. Future projections depend entirely on assumptions about growth rates in the United States and China that cannot be known with certainty. Still, most economists expect that China will, at some point, surpass the United States as the world’s largest economy.

China is joined by other emerging economies with rapid growth rates, including India, Indonesia, and others. US allies, including Japan, Germany, and the United Kingdom, remain among the wealthiest nations on Earth, but their share of global power is also declining relative to the rise of the rest.

This shift is significant because international orders function best when their formal attributes at least roughly reflect the underlying balance of power. While only one measure of global influence, economic power is central given the leverage it provides over trade and investment, and the resources it offers to sustain military and security advantages.

It is also important to point out, however, that the United States and its formal treaty allies continue to possess a preponderance of power in the international system. As Figure 4 shows, the United States and its formal allies currently produce 59 percent of global GDP. When including other countries considered to be “democracies” by the widely used Polity scores, that number rises to 75 percent of global GDP. Democracies continue to retain global influence because more countries have transitioned to democracy since the end of the Cold War, and overall economic growth in democratic countries has outpaced that in autocratic states since 1991.

The major shift since the dawn of the post-Cold War world, therefore, is not that the power of the United States and its democratic allies and partners has declined substantially. The major difference is that the share possessed by autocratic challengers, especially China, has grown. As Figure 4 shows, the world is approaching a more bipolar distribution of power, with more wealth concentrated in the democracies and in a grouping of autocratic challengers led by China.

This means that, if they are able to work together more cohesively, the United States and its democratic allies and partners still have the power and influence necessary to significantly shape international outcomes. Moreover, if they are able to expand their ranks to court other nonaligned democracies like India, Indonesia, and Mexico, their influence on the international system can be even more decisive.

Disruptive Technologies. New technologies—including artificial intelligence (AI), robotics, quantum computing, and biotech, among others—are being developed at an exponential pace, and have the promise to transform society. They will determine how people live and function in the twenty-first century, significantly shaping the global economy, international security, and the course of geopolitics.

Throughout history, progress has been built on technological innovation, ranging from Thomas Edison’s light bulb to Henry Ford’s assembly line to the silicon chip, the personal computer, and the Internet. While new technology promises improved productivity and quality of life, it will bring serious downside risks, including economic dislocation and weapons proliferation. AI, for example, is already being widely adopted in the private sector to achieve great efficiencies and cost savings.25 At the same time, automation threatens to put millions out of work as jobs once performed by humans are replaced by machines. Moreover, AI is also being introduced into national militaries. A logical next step is fully autonomous weapons that can select and engage targets without a human in the decision-making loop. Some warn that these “killer robots” introduce many ethical and security risks, including the fear that they may turn on their creators and threaten humans’ very existence or, indeed, what it means to be human.26 Henry Kissinger warns, “We are in danger of losing the capacity that has been the essence of human cognition.”27

The existing international system was designed to deal with the most important dual-use technologies of the twentieth century, such as nuclear power, but it must be updated to deal with the technologies of the twenty-first century. As with nuclear energy, the international community needs an entirely new set of international norms, standards, and agreements for responsible uses of new technologies that mitigate their downside risks, while maximizing their upside potential.

Since the time of Edison, the United States has been the world’s most innovative country, but it is at risk of losing that title to China and other countries that aim for the first-mover advantage in the next round of technological breakthroughs. Throughout history, technological progress and international leadership have gone hand in hand. Think of roads and aqueducts in ancient Rome, the steam engine in nineteenth-century Great Britain, and the Internet in the United States. If China or another country takes the lead in the new tech arms race, Beijing may be in a better position to rewrite the international system’s rules.

### Alt – AT: International Workers Movements

#### Alt has zero chance of success---prefer quantitative studies that analyze one-thousand years of data---gradual reforms

Calnitsky ’21 [David; August 8; Assistant Professor in the Department of Sociology at Western University; *Critical Sociology,* “The Policy Road to Socialism,” Sage Online]

David Calnitsky, Published August 8, 2021

I do not, however, think that the revolutionary road is implausible. Rather, it is impossible, at least inside the rich capitalist democracies. And between the implausible and the impossible the choice is clear.

Again, this can be framed as an empirical hypothesis: You do not see revolutions in developed capitalist democracies. As Przeworski and Limongi (1997) have written, there has never been a revolution in a moderately middle-class democracy (see also Przeworski, 2019). Drawing on a thousand years of data, cumulatively collected across 37 democratic countries, they show that not one had collapsed with a per-capita GDP higher than that of Argentina in 1976. Among countries with half that figure, collapse was exceedingly rare. Even a modest GDP brings with it an enormous amount of regime stability. These data in fact include any kind of regime collapse; narrowing the data to socialist revolution makes the empirical case against it even more impressive. Any case for revolution must begin by acknowledging rather than ignoring this evidence.

To look at this question in a different way, I draw on the Cross-National Time-Series Data Archive, which contains information on revolutions (rather than government collapse) for over 200 countries since 1919. Their definition of revolution is very broad (see footnote 7) and includes “attempts” to overthrow government as well as “unsuccessful” rebellions. The data were compiled from newspaper sources and warrants caution, but nonetheless constitutes the most systematic evidence available for these questions. In Figure 9, I present the GNP per capita distribution of revolutions, from 1919, where GNP is first available, to the present. By considering only those country-years with revolutions I reduce the observation count from 17,520 to 184. Unlike Przeworski, I do not further restrict the data to democracies. The graph displays an extreme skew: The vast, overwhelming majority of cases of revolutionary threat occur in countries with a per capita GNP below $5,000 USD. For reference, the figure for the US in the data is about $65,850 in 2019. The hypothesis above—that we do not see revolutions in developed democracies—seems borne out by the evidence.

figure

Figure 9. Histogram of country-years with revolutions.

Source: Cross-National Time-Series Data Archive. Data drawn from 200 plus countries between 1919 and 2018 are then restricted to country-years (N = 184) in which there were “revolutions,” as well as a “major government crisis” and “anti-government protests.”

Why exactly is this true and what are the mechanisms to explain it? Why is the revolutionary strategy impossible for a country like the US? There are, at bottom, three reasons, each of which stands alone as a sufficient condition to snap the last threads of one’s revolutionary faith.23 The first two suggest that revolution is unachievable, and the last suggests that even if it is achievable, socialism by revolutionary means is unachievable. The revolutionary road is closed on the following grounds:

(1) Workers do not want it

(2) Capitalists would sooner grant reforms

(3) A smashed state is more likely to result in tyranny than deep democracy

Not only has there never been a successful revolution in a developed democracy, there has never been a working class that has wanted one (e.g. Erikson and Tedin, 2015; Sassoon, 1996).24 There are no clear cases where the dominant inclination of the working class in a developed democracy was revolutionary. Recall that the above graph also includes attempts and unsuccessful cases. It is self-evident that workers have not joined revolutionary groups en masse at any point in the context of a rich democracy. Nor were their aspirations to join such groups thwarted by violence or ideology. When gains inside a capitalist democracy are available—either individual or collective ones, and this has been true even through the neoliberal period, where median living standards have continued to (slowly) go up and not down—it is not worth risking everything for an uncertain future (Thewissen et al., 2015).25 More important than the dynamic point is the static one: When standards of living are moderately high, as shown in Figure 9, the modal worker has more to lose than her chains. This is not an argument against socialism; but to revise Werner Sombart, the life raft of revolution really was shipwrecked on shoals of roast beef and apple pie.

Therefore, the reasons workers are not revolutionary are materialist in character. Explaining their reformist politics does not require appeal to venal trade union leaders or false consciousness. Most people wish to minimize risk in their lives, and revolution involves taking on colossal risks. For example, home-ownership in the developed world hovers around 70%; this means that a lot of people have a lot to lose.

By contrast, the materialist case for revolution proposes that people favor it when their expected post-revolutionary standards of living are greater than their current standard (Roemer, 1985). But when we add moderate risk- and loss-aversion the calculation changes (Kahneman and Tversky, 1991). Say you have a low income, but own a few assets, maybe a house, a car, and perhaps you also have a child; what risk profile would you require to gamble your modest holdings for an uncertain future which might be better but might be worse? Even if you are certain that the probability of better is greater than the probability of worse, you have to envision workers as a class of inveterate gamblers to take the bet. Moderately cautious people who prefer a bird in the hand will still view the downside risk as too great. Equal gains and losses are not experienced equally. This is the loss aversion phenomenon. But the assumption of a population confident about improved standards of living—and a willingness to take risky strategies to achieve them—is itself unwarranted. This is the risk aversion phenomenon. The modal worker is of course correct to suspect that her post-revolutionary welfare is uncertain; socialists after all do not have satisfactory answers to the problems of coordination, motivation, and innovation under socialism (for attempted answers that are provocative and oftentimes brilliant, see Albert, 2004; Cottrell and Cockshott, 1992; Corneo, 2017; Roemer, 1994; and Wright and Hahnel, 2016). When one compares the status quo to a future where both heaven and hell are seemingly plausible, it is perfectly rational that people everywhere would abandon the barricades. And abandon them they did.

Now perhaps the revolutionaries have persuaded us that negative outcomes are far-fetched, that we are very confident that revolution will usher in, eventually, the land of milk and honey. It is still the case that in this model the promised land will only be reached after a social breakdown of unknown duration: A complete overhaul in the organization of production will lead to some middle period of deteriorating material welfare as capitalists rapidly exit the economy. This means chaos and uncertainty, but it could also mean war. The interregnum could last a year, but it might last two decades, and however optimistic we are about the end point, we cannot in advance know how long this interim phase will persist. In the meantime, revolutionary enthusiasm will wane, erstwhile supporters will decamp, a “stay-the-course” electoral strategy will be outflanked by competitor parties promising a return to normalcy, and the desire to consolidate gains will make the authoritarian impulse greater. From a materialist perspective, the uncertain passage through what Przeworski (1986) calls the “transition trough” makes the journey less appealing.26

To my mind, these factors explain why all working classes in all developed democracies have been decidedly reformist in orientation. The reason why revolutionary socialism has always been marginal in rich capitalist economies—and will always be outflanked by reform-oriented socialism—is that only the latter consistently deliver high (and usually increasing) standards of living and low (and usually decreasing) levels of risk. As long as the Mad Max world of catastrophic collapse can be avoided, reform-oriented parties will always better capture the enthusiasm of poor and working people.

Thus, when we try to explain the non-revolutionary attitudes of our working-class friends and family, we do not need to lean on the false consciousness account, for there is a more parsimonious materialist explanation. As such, any case for revolution must be non-materialist in character: You can be a materialist or a revolutionary, but not both.

This is the dilemma the revolutionaries must consider: Revolution is only possible when the forces of production are underdeveloped, but it can only be successful when they are sufficiently developed to make socialism (or communism) objectively viable.27 As Elster (1986) has argued, the circumstances under which revolutions spark and succeed never coincide.

What about the capitalists? Under these circumstances, it is reasonable to expect that they will fight far harder against a revolution than they would against reformist drives. Indeed, ignoring the response from capitalists violates Elster’s first law of political rationality: Never assume your opponent is less rational than you. If revolution were the alternative, employers would grant every imaginable reform, from far higher taxes to the rejiggering of power relations in the workplace. In a mugging, most people will surrender their wallet before their life.

Actors in the state ought to respond in more or less the same way—that is, as long as you admit your adversary the competence to read the situation as well as you. If our theory of the state suggests that it acts on behalf of the capitalist class, its apparatchiks would anticipate and preempt any revolutionary crusade with a cocktail of concession and repression. And while it will certainly contest reforms, it will devote all of its resources to break the revolution. Nonetheless, this means that revolutionaries can play a crucial role, even if it is not to foment revolution. Militancy is a powerful strategy to foment reform (for an argument about the history of social democracy along these lines, see Piketty, 2014).

Thus far, the main reason revolution is off the table is because no one wants it—not workers, nor employers, nor the state.

The third point above asks us to imagine the prospects for revolutionary success even if we ignore the wrinkle that workers have neither an interest nor capacity to make it. But let us pretend they did: Why then would we imagine that total social breakdown would prompt a deepening of democracy rather than authoritarian entrenchment? This happy outcome has never before emerged in the wake of social collapse, and there is little reason why the final showdown with the American military ought to produce fertile ground for deepening democracy in all spheres of life. In fact, evidence from the General Social Survey suggests that in response to recession and economic downturn people tend to become less altruistic and less concerned with questions of fairness.28 After situations of economic crisis, voters tend to shift to the right (Lindvall, 2014). The old union song cries out that “we can bring to birth a new world from the ashes of the old,” but life is not birthed on ash. None of the historical case studies track this narrative, and indeed everything we know about human psychology suggests that social devastation makes people more, not less, prone to demagoguery. This means that even if a revolution were achievable, it is probably undesirable.

The argument I have thus far laid out against revolution contends only that it is off the table in middle-class democracies. I have in mind social dynamics within developed capitalist democracies, countries “like the US,” but the premise no longer holds true if we imagine a society that has already suffered some sort of catastrophic societal disintegration—at that point all bets are off. We are of course now talking about a world we are not living in, but it is worth considering the thought experiment nonetheless.

It is possible that America, after some world-historic environmental or economic collapse, begins to look something more like Russian feudalism than contemporary developed capitalism. Revolution then might again be on the table, but the context of desperation and scarcity in this scenario gives little reason to expect it would incubate an egalitarian democratic society. The historical evidence is unambiguous: None of the communist revolutions of the 20th century ushered in deeply democratic egalitarian social structures. Not only are there no examples, but there are also no clear mechanisms on offer.

The fact that this scenario generates an interest in bringing about an egalitarian society by means of revolution does not mean there will be a capacity to do so. The theory is little more than “where there is a will there is a way.” But, as Elster (1980: 124) argues, the general interests of society do not secrete the conditions for their fulfillment. Interests and capacities need not overlap.

There is a final reason to be skeptical of non-evolutionary strategies: The highly dubious premise that the system we erect the morning after will actually work. A socialist economy, if plopped down tomorrow, would be so rife with unintended consequences and pathologies that it is easy to imagine a democracy voting its way back into capitalism. This is true even if we believe (mistakenly, in my view) that the socialist calculation debate is solvable in the age of big data (Morozov, 2019). Interlocutors in the calculation debate have had very little to say about the politics of transition. Indeed, it is hard to imagine success of any kind without a slow and incremental transformation, experimenting with bits and pieces along the way—as we have been doing for the past century. An experimental approach is likely the only way to avoid devastating blunders that undermine the whole project. Moments of institutional upheaval and big change may at times be necessary, but to be successful they will have to rest on a foundation of smaller changes that have been tested.

#### Sudden transition kills two-thirds of the world within two weeks---ONLY gradual transition via reformism is possible in the modern world---prefer ev from the world’s most famous living Marxist

Harvey ’20 [David; 2020; Distinguished Professor of Anthropology & Geography at the Graduate Center of the City University of New York; *The Anti-Capitalist Chronicles*, Pluto Press: London]

Global Unrest

There are many contradictions in the capitalist system, and some are more salient than others. The incredible class and social inequalities and collapsing environmental conditions are obvious priorities. But then comes the “too big to fail, too monstrous to survive” contradiction. Neither the social inequality nor environmental degradation issues can be addressed without taking on this underlying contradiction. A socialist and anti-capitalist program will have to negotiate a knife-edge path between preserving that which services the world’s population and which appears too big and foundational to fail while confronting the fact that it is becoming too monstrous to survive without sparking geopolitical conflicts that will likely turn the innumerable small wars and internal struggles already raging across the planet into a global conflagration.

This is the core of the problem. In Marx’s time, if there was a sudden collapse of capitalism, most people in the world would still have been able to feed themselves and reproduce. They were reasonably self-sufficient in their local area procuring the kinds of things they needed to live and reproduce. People could put some sort of breakfast on their table irrespective of what was going on in the global economy and in global markets. Right now, that’s no longer the case in many parts of the world. Most people in the United States, in much of Europe, in Japan, and now increasingly in China, India, Indonesia, and in Latin America are depending more and more on the delivery of food through the circulation of capital. In Marx’s time, perhaps 10 percent of the global population was vulnerable to disruptions in the circulation of capital, as opposed to many more who were subject to famines, droughts, epidemics, and other environmental disruptions. The crisis of European capitalism in 1848 was part a product of harvest failures and part produced by a speculative crash focused on railroad finance. Since then, capital operating in the world market has largely eliminated the prospect of starvation due to supposedly natural causes. If there is famine the underlying causes (as opposed to the immediate triggers) can invariably be traced to failures in the social and political system of capitalist governance and distribution. Much of the world’s population is now dependent upon the circulation of capital to procure and ensure its food supply, access the fuels and the energy required to support daily life, and to maintain the elaborate structures and equipment of communication that facilitate the coordination of basic production requirements.

Capital, right now, may be too deeply implicated in the reproduction of daily life to fail. The economic consequences and social impacts and costs of a massive and prolonged failure in the continuity of capital circulation will be catastrophic and potentially lethal for a significant portion of the world’s population. To be sure, indigenous and peasant populations in the Andean highlands may survive quite well, but if the flow of capital shuts down for any prolonged period, then maybe two-thirds of the world’s population would within a few weeks be threatened with starvation, deprived of fuel and light, while being rendered immobile and deprived of almost all capacity to reproduce their conditions of existence effectively. We cannot now afford any kind of sustained and prolonged attack upon or disruption of capital circulation even if the more egregious forms of accumulation are strictly curbed. The kind of fantasy that revolutionaries might once have had – which was that capitalism could be destroyed and burned down overnight and that something different could immediately be built upon the ashes – is impossible today even supposing there ever was a time when such a revolutionary overthrow might have happened. Some form of the circulation of commodities and therefore of money capital has to be kept in motion for some considerable time lest most of us starve. It is in this sense that we might say that capital appears to be now too big to fail. We may aspire to make our own history, Marx observed, but this can never be done under conditions of our own choosing. These conditions dictate a politics that is about sustaining many existing commodity chains and flows while socializing and perhaps gradually modifying them to accommodate to human needs. As Marx noted in his commentary on the Paris Commune,

in order to work out their own emancipation, and along with it the higher form to which present society is irresistibly tending by its own economical agencies, they [the working classes] will have to pass through long struggles, through a series of historic processes, transforming circumstances and men. They have no ideals to realize, but to set free the elements of the new society with which old collapsing bourgeois society is pregnant.

The task is to identify that which lays latent in our existing society to find a peaceful transition to a more socialist alternative. Revolution is a long process not an event.

# 1AR – NDT Doubles

## Top Level

#### Reneging makes conflict twice as likely.

Weisiger & Yarhi-Milo 16 – Alex Weisiger, Political Science Professor at the University of Pennsylvania. Keren Yarhi-Milo, Politics and International Affairs Professor at Princeton University. [Revisiting Reputation: How Past Actions Matter in International Politics, International Organization, 69(2), 473-495, Cambridge Journals]

Reputation and Crisis Onset

Because the reputation critics have focused in particular on the argument that there is no cost to backing down, we focus our analysis primarily on tests related to “bad” reputation. Table 1 presents a series of regressions that examines the basic proposition that countries that have backed down in the past are more likely to be challenged subsequently. Model 1 demonstrates that, consistent with H3 and inconsistent with H1, a country that backed down in the recent past is more likely to be the target of a subsequent militarized dispute. Substantively, the result indicates that a country that yielded in a dispute in the previous year is more than two and one-half times as likely to be challenged than is a country that has not yielded in the previous ten years.

Model 1, however, does not preclude the possibility that the apparent effect of reputation simply reflects the greater involvement of some countries in international politics. Some countries are involved in more international disputes, and hence are both more likely to occasionally yield and to face additional challenges. Model 2 thus inserts a control for the potential target’s recent level of international activity. Consistent with the alternate explanation, the control variable is highly significant and the coefficient for the reputation variable is smaller, suggesting that at least some of the effect observed in Model 1 is spurious. That said, the reputation variable remains highly statistically and substantively significant: a country that yielded the previous year is more than twice as likely to face a challenge than is one that has not yielded in the previous ten years. Model 3 examines the role of international activity in a different manner, restricting the analysis to the subset of potential targets who had been involved in at least one militarized dispute in the previous ten years. Again, the coefficient is smaller than in Model 1, but the effect of reputation remains both statistically and substantively significant.38

Footnote 38 begins:

38. Indeed, the reputation variable remains both statistically and substantively significant for a range of robustness checks, including any combination of controlling for the target’s recent activity level, restricting the analysis to politically relevant dyads, and restricting the analysis to the set of countries involved in at least one dispute in the previous ten years. Results are also robust to controlling for or omitting prominent historical periods (for example, the interwar period or the Cold War) and to restricting the dependent variable to fatal MIDs.

The article continues:

The primary analysis uses a measure of reputation that codes a country as losing reputation when it yields in an MID. This is, of course, not the only possible measure of bad reputation. Model 4 presents results using a different specification based on the International Crisis Behavior data set. Specifically, a country is coded as acquiring a bad reputation in this specification if it is the coded loser of a crisis in which it did not escalate to the use of force. The observed effect is substantively indistinguishable from that reported in Models 2 and 3.39 Model 5 in turn substitutes the alternate formulation of the reputation variable (AltRepit) that takes into account behavior in all recent MIDs; again results are quite comparable.40

Table 1, Backing down and subsequent MID initiation, omitted.

All of these regressions make use of pooled time-series cross-sectional data, an approach that, although standard in the international relations conflict literature, has been criticized for neglecting the importance of unobserved differences across dyads.41 Model 6 thus presents results using a logit specification with dyad fixed effects. In any dyad in which no conflict occurs, the absence of conflict is ascribed to the dyad fixed effect and all relevant observations are dropped from the analysis, substantially limiting sample size. Nonetheless, reputation based on past yielding remains a significant predictor of subsequent challenges.

Control variables in Table 1, and in subsequent analyses, perform as would be expected from findings in past work. More unequal dyads are less likely to experience conflict (albeit at a statistically insignificant level in Model 6), whereas dyads that are stronger overall experience more. Consistent with past findings, alliances are typically associated with an increase in conflict onset. More contiguous dyads are similarly consistently more likely to experience conflict, whereas increased levels of dyadic democracy are associated with less conflict. Finally, as predicted, the presence of a major power in a dyad is associated with an increased probability of conflict, although this effect is offset somewhat in jointly major power dyads.

Figure 1 graphs marginal effects for substantive variables in Model 2 of Table 1, in every case holding other variables at their medians.42 Graphs are on a common axis to facilitate comparison across variables; we omit contiguity, whose substantive effect is sufficiently larger than that of other variables that a common comparison is impractical. A country that backed down the previous year is more than twice as likely to be targeted than a country that has not backed down in the previous ten years. This effect, though smaller than that for many traditionally realist variables, is slightly larger than that associated with a move from a dyad in which one country is fully autocratic to a jointly fully democratic one.

Including a range of control variables and across a number of robustness checks, therefore, there is a consistent observation that countries that yield in disputes with other countries are more likely to face a subsequent challenge than countries that do not. This finding, our most important, suggests that there is good reason for leaders to fear adverse consequences associated with backing down in disputes.

### Link

### Uniquenenss

#### Biden effectively competes with China.

Su et al. 20 -- Alice Su, Shashank Bengali, Tracy Wilkinson, citing Willy Lam, History and China Studies Professor at the Chinese University of Hong Kong, and Shi Yinhong, director of the Center on American Studies at People’s University in Beijing. [China can expect Biden to keep pushing for change, with help from U.S. allies, 11-11-20, https://www.latimes.com/world-nation/story/2020-11-11/what-approach-will-joe-biden-use-for-dealing-with-u-s-rival-china]

BEIJING — China is eyeing the U.S. election of Joe Biden as the next president warily, expecting that he could be just as formidable an adversary as the man he is replacing and perhaps even more effective.

Arguably the most vexing foreign policy challenge the Biden administration faces, China in recent years has emerged as a major world power, flexing economic and military muscle in the South China Sea, on its border with India and across entire continents.

The Trump administration has received some credit internationally for confronting Beijing with economic threats in an effort to check its growing influence. But many observers are hoping that Biden brings a more coherent approach and will work more closely with allies and partners who share a skepticism of China’s policies.

By shifting rhetoric and style, Biden’s aides say, he could assemble a more potent group of allies to stand up to China and President Xi Jinping. Trump was less successful in recruiting partners because of his bombastic America-first approach that alienated numerous other leaders — and pushed some countries closer to China.

At the same time, Biden and his advisors indicate they would be willing to open or cultivate some areas of cooperation with China, such as dealing with climate change.

Trump’s top diplomat, Secretary of State Michael R. Pompeo, this week compared the administration’s policies toward China, including punishing tariffs and economic sanctions, to President Reagan’s challenge to the Soviet Union that preceded the fall of Communism.

But Biden, whose presidential inauguration is Jan. 20, has said getting tough with China must be a broader, more nuanced effort.

“The most effective way … is to build a united front of U.S. allies and partners to confront China’s abusive behaviors and human rights violations,” he wrote in a policy statement this year, “even as we seek to cooperate with Beijing on issues where our interests converge, such as climate change, nonproliferation, and global health security.”

Such a “united front” is what Beijing fears most, said Willy Lam, professor of history and China studies at the Chinese University of Hong Kong.

“Trump is pushing an isolationist, America-first policy, whereas Biden will seek the views of American allies and friends and come up with a kind of united front against China,” Lam said. “This, the Chinese are most nervous about.”

The Chinese government is one of only a handful of major nations that have not congratulated Biden after vote counts from the U.S. presidential election Nov. 3 showed he beat Trump, saying it wanted to wait for final results. Trump had not conceded as of Wednesday.

Vice Foreign Minister Le Yucheng said at a news briefing last week that China hopes for cooperation with the U.S. in a “healthy and stable” relationship.

“We hope the new American administration will meet the Chinese side halfway to focus on cooperation and manage differences,” Le said.

Biden’s election could also bring more predictability to U.S.-China relations, said Shi Yinhong, director of the Center on American Studies at People’s University in Beijing.

“Compared with Trump, Biden-Harris is far less wild, far less vulgar, and far less erratic,” Shi wrote in an essay published by the Chinese website Ifeng News this week. “Thus it is expected that American policy and strategy toward China will become more predictable and stable,” especially because Biden has stated that he will prioritize diplomacy in foreign policy.

#### China deterrence is HIGH.

Minemura & Mearsheimer 20 – Kenji Minemura, Senior Diplomatic Correspondent, interviewing John J. Mearsheimer, Political Science Professor at the University of Chicago. [INTERVIEW John Mearsheimer: U.S.-China rift runs real risk of escalating into a nuclear war, 8-17-20, http://www.asahi.com/ajw/articles/13629071]

Q: If President Trump fails to be re-elected and Joe Biden, the Democratic Party’s presumptive nominee, becomes president, do you think the United States can restore its relationship with its key allies like Japan, South Korea and Germany? What do you think is the most effective way for the Biden administration to contain China?

A: I think that if Joe Biden gets elected president, the Democrats come to power, and the Democrats will go back to treating our allies in Europe and East Asia much the same way we treated them up until Trump took office.

Trump is an anomaly. Trump is hostile in very important ways. Trump is hostile to America's allies because he thinks that America's allies have taken advantage of the United States. He thinks this is especially true for Germany. These countries in his mind are free riders. They're free riding on the United States. And he's very angry about that. And this has led him to treat virtually all of America's allies quite badly.

I don't believe that will be the case if Biden is president and the Democrats come back. I think we'll have much better relations between Japan and the United States. And Japan won't have to spend endless hours trying to figure out exactly what Trump's policies are and what he's doing from minute to minute. We'll have more regularity in our foreign policy.

And I think that will all be for the good. But I would say that I believe that the Democrats will be as committed to containment as Trump has been. I don't think that there'll be any lessening of America's containment policy if the Democrats beat Trump in November.

I was in China for 17 days in October 2019. And I talked to all sorts of Chinese foreign policy leaders. Almost everybody I talked to believes that it doesn't matter whether Trump wins or loses in 2020 for U.S.-China relations. The Chinese believe that the Americans have their gun sight on China, and nothing is going to change that. I think they are correct.