# 1AC Filed Rates – Georgetown – Michigan PS

## 1AC

### 1AC – Energy

#### Advantage One is Energy:

#### The filed-rate doctrine is a ‘zombie energy law,’ shielding undead companies from liability for anticompetitive behavior.

Macey ’20 [Joshua; 2020; Law Professor at Cornell; Vanderbilt Law Review, “Zombie Energy Laws,” vol. 73, no. 4]

Today, these “zombie energy laws” entrench incumbent market power and prevent the deployment of renewables.15 The filed rate doctrine, for example, continues to shield energy companies from civil antitrust suits even though most energy companies no longer formally file rates with regulators.16 The requirement that regulators assess the financial viability of transmission projects before issuing a certificate of public convenience and necessity to site new transmission lines is a vestigial remnant of a rule that was once needed to prevent new entry into a utility’s exclusive service territory.17 In these ways, courts and regulators have clung to many of the rules that were created to protect customers in the public utility era but have since outlived their useful purpose.18

Footnote 16:

16. See Rossi, supra note 11, at 1646 (noting how courts have “allow[ed] the filed tariff doctrine to become an independent, firm-specific antitrust defense”). In twin cases decided in 1956, the Supreme Court instructed the Federal Power Commission (the regulatory predecessor to the Federal Energy Regulatory Commission (“FERC”)) to presume that any freely negotiated wholesale transaction was “just and reasonable” for purposes of the Federal Power Act and the Natural Gas Act. See Fed. Power Comm’n v. Sierra Pac. Power Co., 350 U.S. 348, 372 (1956) (holding that contract rates freely negotiated between sophisticated parties meet the just-andreasonable standard required by the Federal Power Act, even if they are unprofitable to the public utility); United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332, 344–45, 347 (1956) (same, but for the purposes of the Natural Gas Act). The presumption that freely negotiated energy contracts are “just and reasonable” applies even if FERC did not have an initial opportunity to review the contract. See NRG Power Mktg., LLC v. Me. Pub. Utils. Comm’n, 558 U.S. 165, 167 (2010) (“Under this Court’s Mobile–Sierra doctrine, FERC must presume that a rate set by ‘a freely negotiated wholesale-energy contract’ meets the statutory ‘just and reasonable’ requirement.”); Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1, 554 U.S. 527, 530 (2008) (“The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest.”).

Article continues:

These zombie energy laws are now seriously degrading energy markets. They allow incumbents to raise prices and, worse, prevent clean energy companies from competing with incumbent fossil fuel generators. For example, Arkansas regulators recently blocked a multibillion dollar transmission line that would have enabled more than $7 billion of investment in renewable energy facilities after finding that only incumbent utilities are eligible to receive a certificate of public convenience and necessity in the state of Arkansas.19 Although the project would have reduced electricity prices in the southeast and provided enough clean energy to power over a million homes a year, it has been repeatedly delayed in part because state energy regulators have determined that only incumbent utilities were legally authorized to construct new transmission lines.20 The certificate of public convenience and necessity was originally designed to ensure that rate regulated utilities were able to honor their service obligations. Today, the requirement that regulators assess market demand before granting a certificate of public convenience and necessity entrenches incumbent market power and impedes the development of renewable suppliers.

Numerous scholars and policymakers have questioned the usefulness of these doctrines.21 This Article’s contribution is therefore not to provide a novel critique of these zombie energy laws. It is instead to point out that many of the seemingly diffuse problems that pervade modern electric power markets can be attributed to the historical origins of electricity regulation. All of these laws emerged to mitigate market power abuses under a regulatory system that has largely been abandoned. Their continued application is now facilitating market power abuses and blocking the development of cleaner and cheaper energy sources.

#### The doctrine serves no purpose in energy markets. Studies suggest FERC regulation can’t fix the market without restructuring the exception.

Macey ’20 [Joshua; 2020; Law Professor at Cornell; Vanderbilt Law Review, “Zombie Energy Laws,” vol. 73, no. 4]

The filed rate doctrine might have been a sensible rule when generators were regulated as public utilities. It is difficult to imagine how a plaintiff could have brought an antitrust case in court when utilities had a legal right to a monopoly and when regulators determined what prices were reasonable. The problem with the filed rate doctrine today is that many generators no longer actually file rates with public service commissioners.173

Footnote 173:

173. See Fed. Energy Regulatory Comm’n v. Elec. Power Supply Ass’n, 136 S. Ct. 760, 768 (2016):

Decades ago, state or local utilities controlled their own power plants, transmission lines, and delivery systems, operating as vertically integrated monopolies in confined geographic areas. That is no longer so. Independent power plants now abound, and almost all electricity flows not through “the local power networks of the past,” but instead through an interconnected “grid” of near-nationwide scope.

(quoting New York v. Fed. Energy Regulatory Comm’n, 535 U.S. 1, 7 (2002)).

The article continues:

Energy markets look radically different than they did a century ago. Much of the country’s generation is now compensated through competitive procurements, and, as of 2018, thirty-six percent of all generation is produced by independent power producers that are unaffiliated with investor-owned utilities.174 In the mid-1950s, the Supreme Court announced that it would assume that rates that had been negotiated at arm’s length were just and reasonable.175 Thus, in most of the country, private ordering—not formal ratemaking proceedings—now determines the profits generators make when they sell electricity.176

There is therefore no need for regulators to worry that antitrust suits will prevent the public service commissions from realizing their mandate to prevent discriminatory rates, because regulators in these parts of the country no longer rely on ratemaking proceedings to ensure that rates are just and reasonable. In fact, FERC now presumes that freely negotiated contracts are just and reasonable.177 When FERC and state energy regulators presume, without reviewing contracts in a ratemaking proceeding, that all freely negotiated contracts are just and reasonable, they do not have an opportunity to assess whether a contract has anticompetitive effects.

Yet the application of the filed rate doctrine to competitive energy markets means that market participants are largely shielded from the laws that mitigate anticompetitive behavior in ordinary markets. In 1986, the Supreme Court affirmed the filed rated doctrine on stare decisis grounds, and it did so despite recognizing that the doctrine no longer served its original purpose.178 Without authority to enforce antitrust laws, consumers have to trust that regulators will prevent collusive behavior and monopolistic pricing.

And regulators have failed to prevent market power abuses in electricity markets. Consider the 2000–2001 California energy crisis. At the turn of the twenty-first century, large generators began to strategically refuse to sell electricity until prices rose to astronomical levels.179 Companies such as Enron would purposefully export electricity that was needed in the state to neighboring states such as Nevada in order to drive up California electricity prices.180 Pacific Gas and Electric (“PG&E”), one of the two California companies that purchased electricity from generators to sell to consumers, was forced into bankruptcy when it found itself unable to afford electricity it was required to supply to Californians.181 This type of behavior contributed to market inefficiencies worth an estimated $12 billion.182 Suppliers’ anticompetitive behavior was one of the reasons wholesale prices increased so dramatically and was thus one of the reasons California had to implement rolling blackouts.183

Other states have experienced similar abuses. Texas found itself in the same position in 2005, when market manipulation cost Texans more than $70 million.184 In the summer of 2006, New York market manipulation cost New Yorkers approximately $150 million.185 Studies of energy prices have demonstrated that market manipulation is an ongoing problem and that the tools FERC uses to deter manipulation are ill-equipped to prevent the types of abuses that pervade energy markets.186

It arguably made sense to funnel antitrust suits against regulated monopolies through the federal regulator charged with overseeing those monopolies. That is because judicial enforcement may undermine a market’s entire rate structure and lead to discriminatory rates. On top of that, a company that enjoys a legal right to a monopoly is by definition permitted to engage in some conduct that would otherwise constitute an antitrust violation. In such cases, it arguably made sense to have the regulator responsible for ensuring that a company charge just and reasonable rates also make sure that the company is complying with service obligations imposed by state tort, contract, and antitrust laws.

Yet courts continue to apply the filed rate doctrine in restructured energy markets. The U.S. Court of Appeals for the First Circuit, for example, has held that “utility filings with the regulatory agency prevail over . . . other claims seeking different rates or terms than those reflected in the filings with the agency.”187 According to the Ninth Circuit, the doctrine is “a form of deference and preemption, which precludes interference with the rate setting authority of an administrative agency, like FERC.”188

As explained in Section III.C, the filed rate doctrine was a judicially created doctrine intended to make sure that the judiciary did not undermine rates filed in cost-of-service ratemaking proceedings. Today, however, FERC has replaced monopoly cost-of-service ratemaking with a market-based approach to setting wholesale rates in most of the country. The Commission now seeks to ensure “just and reasonable” rates “by enhancing competition” among multiple wholesale providers of electricity.189 FERC has done so because it has concluded that competition is the most effective way “to bring more efficient, lower cost power to the Nation’s electricity consumers.”190 To achieve that purpose, FERC has endeavored “to break down regulatory and economic barriers that hinder a free market in wholesale electricity”191 and it has chosen to rely on market forces in competitive auctions to fulfill its statutory charge of ensuring “just and reasonable” wholesale rates.192 Courts thus seem to reflexively apply the filed rate doctrine in restructured markets without recognizing that the doctrine has become obsolete in markets where energy regulators do not review every energy contract before determining that the contract is just and reasonable.193

Restructured energy markets are intended to create the same incentives as ordinary markets. To that end, exempting energy companies from judicial enforcement of ordinary tort, contract, and antitrust claims gives energy companies an exceptional privilege. In the cases described in this Section, the filed rate doctrine prevented civil plaintiffs from enforcing antitrust laws.194 In this way, a doctrine that was originally meant to protect consumers by ensuring utilities treat all customers fairly has become a weapon that generators yield to exploit their market power.

#### Energy prices are rising.

Smith 11-8 [Talmon; November 8; Economics reporter for The New York Times based in New York. Before joining the Business desk, he was a staff editor in Opinion, covering public policy, economics and culture; *The New York Times,* “Winter Heating Bills Loom as the Next Inflation Threat,” <https://www.nytimes.com/2021/11/08/business/economy/home-heating-prices-winter.html>; KS]

With consumers already dealing with the fastest price increases in decades, another unwelcome uptick is on the horizon: a widely expected increase in winter heating bills.

After plunging during the pandemic as the global economy slowed, energy prices have roared upward. Natural gas, used to heat almost half of U.S. households, has almost doubled in price since this time last year. The price of crude oil — which deeply affects the 10 percent of households that rely on heating oil and propane during the winter — has soared by similarly eye-popping levels.

And those costs are being quickly passed through to consumers, who have become accustomed to cheaper energy prices in recent years and now find themselves with growing concerns about inflation this year.

In the United States, the winter months account for about 50 to 80 percent of residential fuel consumption. And there is “a significant chance” consumers could face a “marked increase” in prices for heating, said Nina Fahy, an analyst for Energy Aspects, a research consultancy.

Last winter was warmer than average, which led to residential energy bills that were comparatively low. This season, heating costs could rise to levels not seen a decade, even if there isn’t a severe winter. Several factors — lower global fuel inventories, incentives for producers to let prices rise and a mismatch between supply and demand as economies emerge from the pandemic — may combine to push bills higher regardless.

Mark Wolfe, executive director of the National Energy Assistance Directors’ Association, a group of state officials administering aid to low-income households, says those living paycheck to paycheck, or just trying to save, aren’t going to be soothed by complex explanations about inventory levels, supply chains or global demand. When the bills start coming in December or January, he said, “the public’s going to get angry.”

Expert forecasts suggest that the southern half of the country, which has milder winters and relies on relatively cheap electricity for home heating, may enter spring largely unscathed. But the Northeast and the Northern Plains, as well as rural areas nationwide, are far more dependent on heating oil and propane, which are highly exposed to price spikes in commodity markets.

#### Private utilities are creating artificial shortages – limits supply and raises prices.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Plaintiff-appellant accuses Eversource Energy and Avangrid (two vertically integrated utilities that distribute gas and electricity to end-use customers and own power generation assets) of misusing their market power at the natural gas resale level and engineering a chain of events that inflicted substantial harm on New England residents. The defendants-appellees abused their gas pipeline use rights to create an artificial shortage of resale gas, a key input for generating electricity in New England. By limiting the supply of gas in New England and raising the price of natural gas, the defendants-appellees increased the costs of generating electricity. And by raising the costs of generating electricity, they increased wholesale electricity prices and ultimately retail electricity costs for New Englanders by more than $3 billion.

#### Market power abuses drive up prices and grid vulnerabilities.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

B. The Unique Nature of the Electricity Market and the Greater Potential for Market Abuse

The electricity market is different from any other competitive market in a way that makes it hard to control. This makes the electricity industry particularly prone to market power abuse by individual utilities.45 The wholesale electricity market is currently under FERC's jurisdiction.46 That means that private utilities are required to file their tariffs with FERC for its review and approval.47 During the approval process, FERC reviews the market share of the utility in order to determine whether the utility possesses the market power necessary to manipulate the market.48 Market power means the power of a single firm to drive prices upwards without losing its consumers.49 In its extreme form, market power leads to monopoly.50 Monopolies hurt consumers because they produce too little and charge too much.51

Currently, FERC employs the Federal Guidelines developed by the DOJ and the FTC for nonelectricity markets as a benchmark for the critical market share under which the utility is incapable of exercising market power.52 This market set by DOJ and FTC stood at twenty percent.53 What FERC does not account for is that the unique characteristics of the electricity market "directly translate into enhanced market power for generators and traders holding much smaller market shares than 20%."54 The nature of the electricity market is such that when the right conditions are met, even a utility with as little as one percent of the market share can exercise significant market power by withholding capacity and driving the prices upwards.55

The electricity market is unique in several ways. First, the demand for electricity is highly inconsistent over time.56 Second, electricity cannot be stored.57 That means that "[e]ach unit consumed must be produced at exactly the nanosecond it is consumed."58 Thus, unless consumers are responsive in their demand for electricity, the only way to stabilize prices is to add more generators because the future capacity cannot balance out the present capacity.59 The demand for electricity is fairly inelastic due to the lack of price information among consumers.60 Price elasticity of demand describes "the extent to which quantity demanded decreases in response to an increase in the price of a good or service."61 Therefore, consumer demand does not act as a constraint upon market power because consumption will continue at the same rate regardless of the price charged.62 Further, the number of generating facilities is relatively fixed due to the substantial entry barriers for production of electricity.63

Thus, varying demand for electricity and the inability to store electricity may result in tremendous price volatility in the electricity market.64 Further, these characteristics open the door to potential market power abuse by making it possible for one firm to artificially inflate prices by withholding its electricity generation capacity or raising its prices with impunity.65 The fact that the exercise of market power in the electricity market does not demand collusion makes the electricity market particularly vulnerable to abuse.66 In case of collusion, however, the price of electricity can soar even higher.67

Third, electricity is transmitted through an integrated transmission grid which may include several regions in the United States and Canada.68 Consequently, individual states can impact the market significantly yet have very little power to control it.69 Further, because electricity cannot be stored, the only way to operate the grid without causing blackouts is to balance generation and demand carefully in order to avoid surplus in the wires.70

#### Rising prices guarantee demand outpaces supply – ensures grid failure.

Kocieniewski & Malik 11-5 [David and Naureen; November 5; Reporters at Bloomberg; *Bloomberg;* “The Power Grid Is Just Another Casino for Energy Traders,” <https://www.bloomberg.com/news/features/2021-11-05/why-is-my-electric-bill-so-high-energy-traders-bets-could-be-the-culprit>; KS]

Anyone who pays a utility bill in the U.S. is familiar with the symptoms of an aging power grid perpetually in need of upgrades. Less visible are the entities that bet on, and make multimillion-dollar profits from, the grid’s shortcomings. GreenHat’s story shows that not only do American power customers have to contend with high electric bills, rolling blackouts, and increasingly common outages—they’re also underwriting a trading system that allows speculators to pocket the winnings and sticks ratepayers with some of the biggest losses.

Andrew Kittell grew up in the shadow of Wall Street. His father, Donald Kittell, was an executive with Morgan Stanley Dean Witter and later served as the chief financial officer for Sifma, the Securities Industry and Financial Markets Association. Andrew liked excitement—he skied and surfed—but told friends he’d learned from summer jobs on Wall Street that he didn’t care for financial risk. At Columbia Business School, he wrote in-depth research on the odds of winning at a casino, reaching conclusions that soured him on gambling, close associates say.

Kittell was hired out of school by Bear Stearns, for a unit that aimed to wring profit from the investment bank’s portfolio of power plants. After Bear’s 2008 bankruptcy, he wound up in Houston at JPMorgan Ventures Energy Corp. (JPMVEC), where he worked alongside fellow trader John Bartholomew. Bartholomew had spent years as a power purchaser at a Southern California utility; he boasted on his résumé that the experience had taught him how to take advantage of flaws in the state’s payment formulas for power generators.

In the broadest terms, power traders try to anticipate when demand will rise and supply will falter. JPMVEC did all that—and also focused on finding rules it could exploit. One example: During times of heightened demand, California officials would pay plant owners hefty ramp-up fees to bring more generators online. So JPMVEC wouldn’t switch on the handful of plants under its control until it could charge as much as 83 times the normal price of power. The plants would run for a bit, then shut down to await the next demand peak. In all, the firm employed 12 different strategies that federal officials determined went beyond typical behavior and were designed to game the system.

According to internal emails, senior JPMorgan executives expected the power unit to reap hundreds of millions of dollars, but by 2013 regulators had intervened. JPMorgan agreed that year to the second-largest settlement in FERC’s history: It paid a $285 million fine for what the settlement called “manipulative bidding strategies” and returned $125 million more in “unjust profits.”

The next year, Kittell, Bartholomew, and a third JPMVEC alumnus, Kevin Ziegenhorn, formed GreenHat. Through their lawyers, Bartholomew and Ziegenhorn declined to comment for this story.

FERC is the main enforcement authority for U.S. electricity markets. The Securities and Exchange Commission has also led major investigations into energy trading firms, including Enron, whose market manipulation and accounting fraud led to bankruptcy in 2001 and landed top executives in prison. But consumers’ first line of defense consists of four regional transmission organizations, or RTOs, and three single-state independent system operators, or ISOs (New York, California, and Texas have their own grids). These private companies grapple with a system that is part Escher, part Rube Goldberg. Day to day, the essential task is balancing supply and demand—and the power flow has to be precise, at a frequency of 60 hertz, or the grid can become unstable. It’s a daunting task considering that the grid is a sprawling patchwork cobbled together from lines running along paths built a century ago and vulnerable to challenges as unpredictable as extreme weather, mechanical breakdowns, falling tree limbs, cyberattacks, and solar flares. The grid operators also run the markets for financial instruments based on the cost of those disruptions.

GreenHat traded in a market operated by the largest of the grid keepers, the RTO known as PJM Interconnection LLC. PJM (the name originally stood for Pennsylvania, New Jersey, and Maryland) directs power from 1,400 generators through 85,100 miles of high-voltage cables in 13 Eastern states and the District of Columbia. Its 65 million electricity consumers have been spared the widespread blackouts that have affected tens of millions of people in Texas and California lately, but they’ve paid for that stability.

PJM is supposed to balance the interests of power companies, consumers, and communities, but for years it’s allowed major suppliers such as Exelon, Duke Energy, and American Electric Power to bill ratepayers for high-priced upgrades to sections of the grid where they predominate, according to an assortment of studies. Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program, says PJM’s reliable checkoff on new projects allows suppliers to preserve their market dominance and freeze out competition. It’s effectively “a protection racket” for the biggest providers, Peskoe says.

PJM has also allowed power providers owned by Wall Street firms such as Blackstone Inc. and KKR & Co. to tap into the billions of dollars a year PJM pays for what’s called reserve generation—the maintenance of clunker plants that are used only in emergencies, typically a few days a year. That limited role has been a lifeline for aging plants like the 52-year-old Homer City Generating Station in western Pennsylvania, once owned by General Electric Co. It’s a coal-burning plant made all but obsolete by the shale gas boom in the surrounding area. PJM pays it to stay online to help meet peak demand. Federal regulators, academics, consumer advocates, and market participants all say PJM pays for far too much capacity. PJM disagrees.

GreenHat found a similarly accommodating environment in PJM’s market for congestion contracts. Grid operators dole out rights to the excess congestion revenue they collect to utilities and other power suppliers. At regular auctions, the recipients can resell such rights as futures contracts. Winning bidders, including speculators like GreenHat, acquire their positions on credit; no money changes hands until the contracts’ terms end. That can be years in the future.

Similar markets operate around the country, but GreenHat found PJM’s especially attractive. In comments to close associates, Kittell cited one particular aspect: PJM allowed traders to buy large numbers of congestion contracts while posting very little collateral. To secure the positions that ultimately lost $180 million, PJM required GreenHat to pledge less than $600,000, FERC records show.

PJM declined to comment on the GreenHat case, citing FERC’s ongoing investigation. In emailed statements, PJM has said that since GreenHat’s default it has implemented “a comprehensive overhaul of credit reform, mitigation policies and procedures” that include stricter collateral requirements and the appointment of a chief risk officer in 2019. The new policies give PJM officials “authority to limit, rescind or terminate participants.”

PJM has also closed another regulatory gap. When GreenHat set up shop, PJM had no screening process in place for new traders or trading firms. It does now. The applications of the GreenHat executives were approved without so much as a Google search.

Anyone who’s paid surge pricing for an Uber has a general idea of what creates congestion revenue: Prices and surcharges climb steeply whenever demand exceeds suppliers’ capacity. In the electricity market, there are additional wrinkles. Overloading a power line causes wires to retain heat and stretch, putting them at risk of failure, so grid operators like PJM have to balance the limited capacity of the lines against the ceaseless ebb and flow of demand. When needed, they bring on additional power providers, at higher prices. Say the price on a given day is $30 per megawatt-hour. When there’s a little pressure on supply, that might rise a few dollars. As the pressure increases it might double, then increase tenfold, then twentyfold. PJM finally caps prices at $1,000 per MWh—but in the most extreme conditions they could surge to $3,750. Next year those prices can rise to more than $12,000.

When prices jump, grid operators charge every ratepayer the new, higher price—even though the initial providers continue to receive the previous, lower price. Imagine you’re riding in an Uber economy car when demand leaps so high that the only option available for new riders is limousines. And then imagine that the price you have to pay automatically increases to the limousine rate—even though your driver will collect only the economy rate.

The money that grid operators collect from consumers but don’t pay to power providers is congestion revenue. During the first six months of this year, consumers in PJM’s service area kicked in $354 million in such revenue, a 97% increase from a year earlier.

#### Grid failure is existential.

Weiss and Weiss ’19 [Matthew and Martin; May 29; National Sales Director at United Medical Instruments, UMI and Research assistant at the American Jewish University; Neurosurgeon at UCLA-Olive View Medical Center; Energy, Sustainability, and Society, “An assessment of threats to the American power grid,” vol. 9]

Consequences of a sustained power outage

The EMP Commission states “Should significant parts of the electrical power infrastructure be lost for any substantial period of time, the Commission believes that the consequences are likely to be catastrophic, and many people will die for the lack of the basic elements necessary to sustain life in dense urban and suburban communities.” [67].

Space constraints preclude discussion on how the loss of the grid would render synthesis and distribution of oil and gas inoperative. Telecommunications would collapse, as would finance and banking. Virtually all technology, infrastructure, and services require electricity.

An EMP attack that collapses the electric power grid will collapse the water infrastructure—the delivery and purification of water and the removal and treatment of wastewater and sewage. Outbreaks that would result from the failure of these systems include cholera. It is problematic if fuel will be available to boil water. Lack of water will cause death in 3 to 4 days [68].

Food production would also collapse. Crops and livestock require water delivered by electronically powered pumps. Tractors, harvesters, and other farm equipment run on petroleum products supplied by an infrastructure (pumps, pipelines) that require electricity. The plants that make fertilizer, insecticides, and feed also require electricity. Gas pumps that fuel the trucks that distribute food require electricity. Food processing requires electricity.

In 1900, nearly 40% of the population lived on farms. That percentage is now less than 2% [69]. It is through technology that 2% of the population can feed the other 98% [68]. The acreage under cultivation today is only 6% more than in 1900, yet productivity has increased 50 fold [69].

As stated by Dr. Lowell L Wood in Congressional testimony:

“If we were no longer able to fuel our agricultural machine in the country, the food production of the country would simply stop, because we do not have the horses and mules that used to tow agricultural gear around in the 1880s and 1890s”. “So the situation would be exceedingly adverse if both electricity and the fuel that electricity moves around the country……… stayed away for a substantial period of time, we would miss the harvest, and we would starve the following winter” [70].

People can live for 1–2 months without food, but after 5 days, they have difficulty thinking and at 2 weeks they are incapacitated [68]. There is typically a 30-day perishable food supply at regional warehouses but most would be destroyed with the loss of refrigeration [69]. The EMP Commission has suggested food be stockpiled for a possible EMP event.

A prescription for failure

Even if all the recommendations of the Congressional EMP Commission were implemented, there is no guarantee that the grid will not sustain a prolonged collapse. There should therefore be contingency plans for such a failure.

There is also another consideration. The foundational pillars of prior American nuclear defense policy, in today’s climate, are of uncertain validity. Mutual assured destruction is the Maginot line of the 21st century. Nonproliferation will prove difficult to resurrect.

The consequences of a widespread nuclear attack have been positioned to the public as massive deaths from blast effects, and then further lingering deaths from the effects of radiation. We suspect there will be no electricity, and there will be no electricity for a very long time.

There should be an actionable plan in anticipation of a possible prolonged collapse of the grid—a retro-structure and a skill set to provide a framework for survival. Our sense is there is no plan.

#### The filed rate doctrine insulates price manipulation from private suits.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Legislative and regulatory action have transformed the governance of gas and electricity industries since the 1970s. For much of the twentieth century, comprehensive public utility regulation governed the production and sale of gas and electricity. Federal and state regulators treated both industries as generally monopolistic and subjected firms to price regulation. Under this cost-of-service regulation, federal and state regulators established rates that allowed sellers of gas and electricity to recover their costs and earn a reasonable rate of return on their capital investments. Over the past 40 years, Congress and the Federal Energy Regulatory Commission (FERC) have curtailed the public regulation of prices in natural gas and electricity and introduced market competition in both industries. These legislative and regulatory actions have replaced regulator-approved rates with market-based prices in one or more levels of the gas and electric supply chains. Richard J. Pierce, Jr., The Evolution of Natural Gas Regulatory Policy, 10 Nat. Res. & Env. 53 (1995); Paul L. Joskow, Restructuring, Competition and Regulatory Reform in the U.S. Electricity Sector, 11 J. Econ. Persps. 119 (1997).

Under a system of market-based pricing, full and robust antitrust enforcement is vital to protect the public from the collusive, exclusionary, and unfair practices of producers and traders of electricity and natural gas. See Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”). In this case, however, the Court expanded the filed rate doctrine, which was created to protect the integrity of regulatorapproved rates, to immunize Eversource Energy and Avangrid’s manipulation of market prices for electricity and gas from a private antitrust lawsuit. In broadening the filed rate doctrine to dismiss the plaintiff-appellant’s lawsuit, the district court granted a de facto license for sellers of gas and electricity to use their market power to transfer millions or even billions of dollars from the public into their own coffers.

Traditionally, the filed doctrine protected the integrity of rates that federal regulators had approved. Under the filed rate doctrine, the Supreme Court and this Court have declined to retrospectively alter rates that a regulator had approved in advance of taking effect. Square D Co. v. Niagara Tariff Bureau, Inc., 476 U.S. 409 (1986); Town of Norwood v. New England Power Co., 202 F.3d 408 (1st Cir. 2000). With market-based pricing, however, regulators do not require the prospective filing of rates and approve any rates in advance of their effectiveness.

The district court’s expansion of the filed rate doctrine to insulate marketbased prices from private antitrust lawsuits is both bad law and bad policy. First, the decision, in addressing the relationship between the Natural Gas and Federal Power Acts and the antitrust laws, repealed the Clayton Act’s private right of action. The Supreme Court has established a strong presumption against such implied repeals of federal statutes, including the antitrust laws. United States v. Borden Co., 308 U.S. 188 (1939). The Supreme Court has held that “[r]epeals of the antitrust laws by implication from a regulatory statute are strongly disfavored and have only been found in cases of plain repugnancy between the antitrust and regulatory provisions.” United States v. Philadelphia National Bank, 374 U.S. 321, 350–51 (1963). Second, the decision undermines effective antitrust enforcement and the public benefits of market-based pricing regimes. With market-based pricing in gas and electricity, private antitrust lawsuits complement federal regulatory oversight and public antitrust enforcement, provide essential deterrence against collusive, exclusionary, and other unfair practices, and compensate the victims of antitrust violations in gas and electricity markets.

DESIRABILITY OF PARTICIPATION

The district court’s opinion improperly expanded the scope of the filed rate doctrine. The district court disregarded both the strong presumption against implied repeals of the antitrust laws and the importance of antitrust enforcement for competitive market-based pricing in gas and electricity. Amicus curiae will explain the legal authorities and policy considerations that support denying filed rate protection to the market-based prices at issue in this case. Amicus curiae’s brief will not duplicate arguments made by the parties. It will instead provide the amicus curiae’s distinct perspectives on the issues facing the Court.

CONCLUSION

For these reasons, the motion for leave to file an amicus curiae brief in support of the plaintiff-appellant should be granted.

#### Private right of action is key – it’s empirically more effectively than the DOJ and FTC.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Although it did not even consider whether a clear repugnancy exists between the implicated statutes, the district court nonetheless repealed the Clayton Act’s private right of action. 15 U.S.C. § 15. The court ignored the strong presumption against implied repeals and improperly broadened the filed rate doctrine. In natural gas resale and wholesale electricity markets, market-determined pricing is the norm. See supra Part I. The plaintiff-appellant’s complaint “challenge[s] the background marketplace conditions” and not “the reasonableness of any rates expressly approved by FERC.” Oneok, 135 S. Ct. at 1602. See also Otter Tail, 410 U.S. at 374 (“When [commercial] relationships are governed in the first instance by business judgment and not regulatory coercion, courts must be hesitant to conclude that Congress intended to override the fundamental national policies embodied in the antitrust laws.”).

No “clear repugnancy” exists between the Clayton Act and the Federal Power and Natural Gas Acts. The plaintiff-appellant’s complaint does not ask or threaten to unsettle any prices individually filed with FERC before they took effect. In contrast to the individual rates that were prospectively filed in Town of Norwood and Square D, the defendants-appellees here did not file rates with FERC in advance of their effectiveness. Instead of charging regulator-approved or - validated rates, the defendants-appellees’ discretionary conduct4 helped set prices in the market. Indeed, as discussed infra in Part III.B, private antitrust enforcement and federal regulatory oversight complement each other in industries with marketbased prices – and together constrain the discretion of market actors and ensure that they cannot profit through collusive, exclusionary, and other unfair practices.

B. The Full Application of the Antitrust Laws Is Essential for Competitive Market-Based Prices

Since Congress and FERC have committed to market-based pricing in wellhead gas, resales of gas, and wholesale electricity, the full application of the antitrust laws is critical for ensuring the success of this legislative and regulatory market creation. Even as FERC maintains oversight of the electricity and natural gas markets, this regulatory supervision has important limitations and cannot be expected to root out all anticompetitive conduct. Antitrust enforcement complements FERC oversight and provides vital deterrence against anticompetitive practices in gas and electricity markets. Specifically, antitrust suits brought by injured consumers and businesses provide strong deterrence of anticompetitive conduct as well as compensation. In dismissing the plaintiffappellant’s suit, the district court severely weakened the effectiveness of the antitrust laws and empowered sellers of gas and electricity to profit through anticompetitive market conduct.

FERC oversight is not adequate to prevent anticompetitive conduct and ensure that markets in natural gas and electricity are free from collusive, exclusionary, and other unfair market conduct. Although FERC has an obligation to maintain “just and reasonable rates” under the Natural Gas and Federal Power Acts, 15 U.S.C. § 717c, it has only very limited tools to police specific anticompetitive conduct in the gas and electricity markets and to provide any remedy for anticompetitive market conduct it discovers after the fact.

Even assuming FERC acts against anticompetitive and other unfair conduct,5 its remedies provide inadequate deterrence and cannot be counted on to compensate injured parties. FERC can impose monetary penalties of up to a fixed maximum amount per day on parties over whom it has jurisdiction and who have violated FERC rules in gas or electricity markets. 15 U.S.C. 717t-1; 16 U.S.C. 825o-1(b). All such penalties, however, go to the United States Treasury, not to the injured customers, absent agreement by the defendant. FERC can also order disgorgement of ill-gotten profits as a result of market manipulation. Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 (2008). Both remedies are, at best, an imperfect approximation of market-wide injury to purchasers and, at worst, a small fraction of market harm and woefully inadequate to deter market misconduct. And they offer no guarantee of full compensation for injured parties.

Given FERC’s limited market oversight powers, antitrust enforcement plays an important role in gas and electricity markets. Antitrust lawsuits help identify and stop anticompetitive practices and ensure that market-based pricing serves the public. When sellers engage in collusion, exclusion and mergers, they can enhance and maintain their market power and profit at the expense of purchasers and rivals. See, e.g., Keyspan, 763 F.Supp. at 636 (describing alleged effects of anticompetitive swap agreement involving rival generators in New York City). As federal regulators have renounced or been deprived by Congress of direct pricesetting authorities, the full effectiveness of the antitrust laws is essential. Jim Rossi, Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era, 56 Vand. L. Rev. 1591, 1648 (2003). See also Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”).

The filed rate doctrine’s limitation on private antitrust enforcement subverts the effectiveness of the antitrust laws. The ability of injured consumers and businesses to bring antitrust suits is a pillar of the American antitrust enforcement regime. Under the Clayton Act, “[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . ., and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.” 15 U.S.C. § 15. See, e.g., Blue Shield of Va. v. McCready, 457 U.S. 465, 472 (1982) (quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236 (1948)) (“Congress sought to create a private enforcement mechanism that would deter violators and deprive them of the fruits of their illegal actions, and would provide ample compensation to the victims of antitrust violations. . . . As we have recognized, ‘[t]he statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.’”).

Empirical research shows the public importance of “private attorneys general” and the value of having more enforcers on the beat against corporate collusion, consolidation, and monopolization. A study of 60 private antitrust lawsuits between 1990 and 2011 found that these actions generated more deterrence than the federal government’s entire criminal antitrust enforcement activity over the same period. Joshua P. Davis & Robert H. Lande, Defying Conventional Wisdom: The Case for Private Antitrust Enforcement, 48 Ga. L. Rev. 1, 26 (2013). And these lawsuits compensated injured parties, whereas public enforcement generally did not.

Under the district court’s neutering of private antitrust enforcement, market participants have expansive power to control markets through collusive and exclusionary conduct and extract billions in overcharges from the public. Their discretion and power are subject only to the limited oversight of FERC, supra, and resource-constrained public antitrust enforcement agencies. Kadhim Shubber, Staffing at Antitrust Regulator Declines under Donald Trump, Fin. Times, Feb. 7, 2019. Federal antitrust enforcers themselves have recognized the central role of suits brought by consumers and businesses injured by antitrust violations. See, e.g., Study of Monopoly Power: Hearing Before the H. Comm. on the Judiciary, 82 Cong. Rec. 15 (1951) (Statement of H. Graham Morison, Assistant Attorney General in charge of Antitrust Div., Dep't of Justice) (“[I]f you did away with the triple damages suit entirely and still wanted substantial enforcement in order to have economic freedom you would have to quadruple the size of the Antitrust Division.”).

The district court’s expansion of the filed rate doctrine establishes for gas and electricity a regime of “radical deregulation—markets absent common law and antitrust protections.” Rossi, supra, at 1596. By barring purchasers of power and potentially other market participants from bringing antitrust suits for damages, the court’s ruling blocks arguably the most effective antitrust enforcers—individuals and businesses—from vindicating their rights and protecting the public.

CONCLUSION

For the foregoing reasons, this Court should limit the filed rate doctrine to its scope as articulated by the Supreme Court in Square D and this Court in Town of Norwood. The district court improperly expanded the filed rate doctrine to cover market-based prices that are not filed with a federal regulator before they take effect. Accordingly, this Court should reverse the district court’s granting of the defendants-appellees’ motion to dismiss and remand the case for discovery.

#### The plan solves by ensuring arbitrarily approved rates are subject to antitrust.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

This Article argues that judicial review of private party antitrust claims, predicated upon market-based tariffs and filed with a regulatory agency, is not precluded by the filed rate doctrine. Th study is limited to the electricity market. In order to argue in favor of judicial reviewability of private conduct under antitrust law, this Article analogizes the filed rate doctrine with agency inaction in law, which is governed by the doctrine of nonreviewability. In Heckler v. Cheney, the United States Supreme Court gave policy reasons for its conclusion that agency inaction was unreviewable.1 I will apply the reasoning offered by the Court in Heckler to the specifics of a case study and conclude that agency market-based tariff-approval decisions should be reviewable. The case study is California's electricity crisis of 2000-2001. In particular, the examination will concentrate Federal Energy Regulatory Commission's (FERC) poor handling of the crisis, its aftermath, and the antitrust claims that followed.

The presumption of reviewability shifts the burden to show that its approval of a marked-based rate was not arbitrary. Courts should subject an agency's decision to the arbitrary and capricious standard of review. This standard would require agencies to give explanations and standards. If the agency fails to show that the decision was not arbitrary, courts should refuse to apply the filed rate doctrine and should subject the claim to the operation of antitrust laws. Courts should not, however, determine which tariff would best serve the interests of the properly functioning deregulated electricity markets. Such determinations are best left to the legislature or the agency because antitrust law and agency regulation are complementary to each other.

#### That shields against market abuse by promoting accountability and preventing arbitrariness.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

VI. Judicial Review and the Filed Rate Doctrine

There is little reason to continue to disallow judicial review of antitrust claims against utilities on account of the filed rate doctrine. As argued in the preceding section, such claims are likely to be found reviewable if subjected to the Heckler standard in lieu of FERC 's limited expertise with the competitive markets, and its subsequent lack of capacity to monitor and effectively deter market abuse by private utilities.237 Such claims should be subjected to the same principles courts utilize in reviewing claims arising from agency action under the arbitrary and capricious standard of review, namely, the requirement for explanation-giving and standard-setting.

Judicial scrutiny should be limited to the determination of whether the agency's decision was arbitrary, and if it was, courts should then subject the claim to antitrust laws. The determination as to whether rates approved by the agency were indeed sufficient for the proper functioning of a competitive market should be left to the legislature. The courts are poorly suited for the determination of proper rates prices.238

There are several other alternatives to judicial review of agency decision-making process for tariff approval, such as the expansion of the filed rate doctrine or judicial deference to the most politically accountable figure.239 However, judicial review seems to be the most workable solution in light of "the founding principles of the administrative state [which] are dedicated not only to promoting political accountability, but also to preventing administrative arbitrariness."240

The danger of arbitrariness undermines the legitimacy of an agency's decisions by generating "conclusions that do not follow logically from the evidence, rules that give no notice of their application, or distinctions that violate basic principles of equal treatment."241 Such arbitrary results are evident in the continuing application of the filed rate doctrine, which shields private utilities from antitrust claims and prevents remedy even when such rates were approved as a result of an inadequate agency review process and lack of agency expertise.242

Further, the filed rate doctrine, as it exists in its current form and application, poses a serious problem as an impediment to the effective operation of properly functioning deregulated electricity markets.243 The doctrine has to be either abolished or revised. The latter solution would result in keeping the doctrine while expanding an agency's enforcement authority. This solution is simply not workable, because expanding agency authority will not be an effective substitute for agency expertise and experience with competitive markets. Abolishing the doctrine entirely is a more viable answer to the problem at hand. Abolition, however, must be accompanied by judicial review of agency decision- making processes related to tariff approval.

Keeping the filed rate doctrine in its current state is an unwise policy decision. As elaborated earlier, the filed rate doctrine was developed by the courts as a rule of statutory construction out of "deference to a 'congressional scheme of uniform . . . regulation'" delegated to the agency.244 The construed congressional intent behind the filed rate doctrine was to protect consumers from price discrimination by public utilities.245 This intent, however, was later perverted when courts started employing the doctrine to shield regulated utilities from antitrust claims. The mere act of filing with an agency, such as FERC, effectively insulates the utility from antitrust claims, even when the agency's market- based rate-approval process is nothing more than rubber stamping the submitted rates.246 Thus, the doctrine opens the door to market power abuse which poses a serious danger to the proper functioning of deregulated electricity markets.

### 1AC – Plan

#### By expanding the scope of its core antitrust laws, the United States federal government should substantially increase prohibitions on nearly all anticompetitive business practices by the private sector that are currently exempted by the filed rate doctrine.

### 1AC – Econ

#### Advantage Two is Econ:

#### Business confidence is low – numerous indicators.

Marcos 9-28 [Coral; September 28; Business Reporter; *New York Times*, “Stocks Tumble in Worst Day Since May, as Tech Shares Slide and Bond Yields Climb,” <https://www.nytimes.com/2021/09/28/business/stock-market-today.html>; KS]

The prospect of the Federal Reserve not reaching as deep into its bottomless pockets is starting to hit home for investors.

The S&P 500 tumbled 2 percent on Tuesday — the worst one-day slide for the benchmark U.S. index since May — as investors faced the expected wind-down of the enormous bond purchases the central bank has made since the start of the pandemic.

“The deep sell-off highlights the extent of the nerves in the markets surrounding the moves of the Fed,” said Fiona Cincotta, senior financial markets analyst at Forex.com.

The coming slowdown of bond purchases is a sign of the Fed’s confidence that the economy is recovering from the upheaval of the pandemic. But, Ms. Cincotta noted, other factors are still making Wall Street wary.

“There’s also a combination of rising energy prices, concerns that inflation could be more entrenched in these elevated levels and the fact that consumer confidence is slowing,” she said.

The tumble extended into the Asian trading day on Wednesday, though investors signaled that confidence might be returning.

Stocks in Japan were down more than 2.6 percent midday. But losses in other Asian markets, like Hong Kong and mainland China, were more moderate. Futures markets were signaling that Wall Street would open modestly higher.

The trigger for Tuesday’s tumble, which cut across sectors, was a rise in the yield on the benchmark 10-year Treasury note. With the Fed preparing to slow its purchases as soon as November, investors have been selling off bonds before demand ebbs. On Tuesday, that pushed the 10-year’s yield up to 1.54 percent, its highest level since June.

Even though the Fed has said it doesn’t plan to increase interest rates for months or years, government bond yields are the basis for borrowing costs across the economy. When bond prices fall, yields rise — a move that can hinder the stock market’s performance because it makes owning bonds more attractive and can discourage riskier investments.

Higher rates would make borrowing more expensive for smaller companies, and the jump in yields was a blow to shares of several high-flying stocks. Etsy, the online craft marketplace, dropped 6 percent, and Shopify fell more than 5 percent. Both companies have soared during the pandemic.

“With tech stocks, you’re betting for a company to have a breakthrough years from now,” said Beth Ann Bovino, the chief U.S. economist at S&P Global. “If interest rates go up today, that value that you receive years from now is discounted.”

The biggest technology stocks — particularly Amazon, Apple, Microsoft, Google and Facebook — have a vast pull on the broader market and helped drag down the S&P 500. Apple fell 2.4 percent and was the best performer of the tech giants. Amazon dropped 2.6 percent while Microsoft, Facebook and Google were down by more than 3.5 percent.

But the declines cut across many sectors. Energy stocks were the exception, rallying after oil prices climbed early in the day. Schlumberger, ConocoPhillips, Halliburton and Exxon Mobil were among the best-performing shares in the S&P 500, though some of their gains faded as oil futures turned lower in the afternoon.

The Delta variant of the virus remains a concern for investors, while persistent supply-chain bottlenecks have affected everything from auto production to school lunches. In Washington, lawmakers remain deeply divided over spending on infrastructure and expanding social programs.

And another pressing fight is brewing over raising the nation’s debt limit — a dispute that could trigger a government shutdown. Treasury Secretary Janet L. Yellen warned lawmakers on Tuesday of “catastrophic” consequences if Congress does not deal with the debt limit before Oct. 18.

The unease is apparent in stock performance the past four weeks. The S&P 500 is approaching a 4 percent drop for September, ending seven straight months of gains. The winning streak had lifted stocks more than 20 percent, as investors seemed to largely shrug off any bad news.

Bumpy moments have usually involved the Fed. Tuesday’s trading echoed the volatility of earlier this year, when a jump in rates roiled financial markets. That rise happened as traders worried that higher inflation might cause the Fed to increase rates sooner than officials had forecast.

“There’s no doubt that the equity market does not like higher rates — there’s just no debate about it,” Ralph Axel, director of U.S. Rates Strategy at Bank of America.

Lauren Goodwin, an economist at New York Life Investments, wrote in a note to clients that investors have begun seeking out safer investments while weighing concerns including the debt-ceiling fight and regulatory actions in China.

#### **Energy prices drive inflationary pressures.**

Eberhart 9-21 [Dan; September 21; CEO of Canary, LLC.; *Forbes,* “Rising Energy Poses Big Inflationary Threat To U.S. Economy,” <https://www.forbes.com/sites/daneberhart/2021/09/21/rising-energy-poses-big-inflationary-threat-to-us-economy/?sh=7ada2d4377b2>; KS]

Fears about inflation are rampant in Europe where natural gas and power shortages are colliding with the onset of winter to drive energy prices to record-breaking levels. Mix in the effects of supply chain bottlenecks caused by the global pandemic and you have a dangerous cocktail of rising prices and falling purchasing power of must-have energy products.

And while the situation in the United States is not as bad, consumers and investors can’t afford to be complacent. Wall Street traders are watching what’s happening in Europe and anticipating inflation will continue to rise on these shores, too.

Concerns about the most recent Consumer Price Index (CPI) report put the jitters in traders that knocked the wind out of the sails of the stocks market. The year-over-year CPI rose 5.3 percent over its level last August and the core CPI is up 4 percent over the same period. That’s a slight decrease from where they were in July, but it’s still double the 2 percent inflation rate targeted by the Federal Reserve.

U.S. consumer prices increased at their slowest pace in six months in August, however those figures ignore the volatile food and energy components of the market. Consumers don’t have the luxury of ignoring rising prices for energy commodities like crude oil, natural gas, gasoline, and diesel. The cost of energy impacts prices throughout the supply chain – from production to transportation – and those extra costs ultimately filter down to the consumer at the end of the line.

Benchmark Brent crude oil now trades above $75 a barrel, or more than 45 percent above where it started the year, and analysts warn that a tightening oil market could prompt further gains.

Average U.S. retail gasoline prices are some 50 percent higher than a year ago at $3.19 a gallon, and with crude feedstock costs rising and some refineries still constrained after Hurricane Ida, they could also move higher.

The situation is most alarming in natural gas, which many consumers rely on to power and heat their homes. At over $5 per million Btu, benchmark Henry Hub natural gas prices are more than twice as high as a year ago, at an annualized rate equal to a $109 billion increase to consumers. The Energy Information Administration (EIA) reports that working natural gas stocks are 17 percent lower than a year ago and 7 percent below the five-year average.

Gas shortages in Europe and Asia are drawing more U.S. gas abroad as exports of liquefied natural gas (LNG), exacerbating market tightness here despite America’s vast gas reserves. The EIA says that natural gas exports are up 41 percent from a year ago.

The consultancy S&P Global Platts calculates that Henry Hub prices would have to increase to $10 per million Btu to provide incentive to U.S. producers to fulfill domestic natural gas demand rather supply the export market. At those price levels, which the United States experienced in 2008, would cause demand destruction in the manufacturing sector. Many manufacturers that consume large quantities of natural gas can no longer compete in the market at those prices, which results in a loss of jobs.

Low gas inventories and rising prices are a concern because the United States should now be building stocks for the winter when the heating season creates peak demand. The market is now in what’s known as a “shoulder season” when demand is structurally lower because the market is in between robust summer cooling demand and peak winter heating demand.

Instead, American consumers could be facing an uncomfortable winter if natural gas prices spike at the same time as crude oil and refined products push higher while the economy continues to recover from the pandemic.

It’s a dangerous prospect, particularly for lower income families who are hurt most by rising energy prices. A 50-cent-a-gallon increase in retail gasoline prices may not dent the wallet of wealthier consumers, but it can be incredibly painful for those with lower or fixed incomes.

And there’s another side to inflation in energy that can squeeze consumers. Investors use commodity markets to hedge their inflation risk, meaning they buy oil and gas futures contracts to hedge against the risk of consumer prices rising across the board. This speculative buying can drive up the price of the underlying commodity for consumers.

The Biden administration is understandably worried about rising energy prices but its attempts to blame the oil and gas industry are off base and show a lack of understanding of energy markets.

#### Inflation raises costs and decreases discretionary spending.

Troise 10-28 [Damian; October 28; Journalist at Associated Press; *Associated Press,* “Energy Prices Lift Oil and Gas Stocks, Weigh on the Economy,” <https://apnews.com/article/business-economy-prices-a906dbc90bf85a3caa11882e1eb861ec>; KS]

Energy prices are soaring in 2021 and oil and gas stocks are the clear winners, but the losers might just turn out to be businesses and consumers.

The energy sector has far outpaced the broader market in 2021. The S&P 500’s energy stocks are up more than 50%, compared with a roughly 20% gain for the overall index. Devon Energy, Marathon Oil and Occidental Petroleum have all more than doubled in value this year.

While energy stocks are reaping the benefits from high demand and lagging supplies, other areas of the economy are having a tougher time coping.

Surging oil and gas prices are adding to broader inflation pressures that are squeezing businesses and driving up costs. A wide range of manufacturers are finding it more costly to ramp up operations as energy costs rise. Airlines are getting hurt by higher jet fuel costs as they try to rebuild profits. Consumers in the U.S. and around the world are facing a tighter squeeze on their wallets from rising energy costs.

Fertilizer maker CF Industries briefly halted operations at two facilities in the U.K. in September because of high natural gas prices. Delta Air Lines CEO Ed Bastian warned investors earlier in October that fuel prices will hurt its ability to remain profitable through the end of the year. It expects a “modest” loss in the fourth quarter.

Consumers are already paying more for goods as companies pass through higher fuel costs, raw materials costs and supply chain disruptions. More worrisome to some analysts is what happens if people have to cut back on spending in order to pay for higher gas and home heating costs. The economic recovery depends on continued consumer spending, but higher energy costs could mean less discretionary spending on services, travel and goods.

#### The economic effects ripple through every industry and sector.

Salzman 11-9 [Avi; November 9; Senior writer at Barron's, covering stocks, the economy, and the impact of new technology on financial markets; *Barron’s,* “High Energy Prices Are Rippling Through the Economy,” <https://www.barrons.com/articles/high-energy-prices-are-rippling-through-the-economy-51636477167>; KS]

The latest government inflation figures show that prices are rising fast, and much of the momentum is coming from energy. The trends are already hitting businesses in several industries and will continue rippling through the economy. Investors should keep an eye out for shrinking margins—and possibly pressure on valuation—in the months ahead.

On Tuesday, the Bureau of Labor Statistics released the monthly producer price index, which measures prices of goods and services as they make their way through the supply chain. The report showed that the PPI rose 0.6% in October on a month-over-month basis, and 8.6% on a year over year basis, in line with economists’ expectations.

The consumer price index, which measures prices at the retail level, is scheduled to be released on Wednesday. That report is likely to show that escalating energy prices are forcing consumers to pay up for heating oil, propane, gasoline, and other fuels.

“I think more pain is going to come to the consumer, certainly, for this winter,” said Marcus McGregor, an energy analyst at asset manager Conning. “I think if you look at the latest reports, costs for propane, natural gas and any sources that are leading into the consumer’s home—if we have a really cold winter—are expected to increase significantly this winter. So I see more pain before relief when it comes to the U.S. consumer.”

Businesses are already having to adjust. The PPI shows how the escalating energy costs are affecting corporations—and how they may end up flowing through to consumers in several industries. The price of goods that were at the final stage of production (as opposed to component parts) rose 1.2% in the month, with three quarters of that jump having to do with a rise in the price of energy, according to the report. In October, oil prices rose 13%. Natural gas prices were flat in October, after jumping 34% in September, the largest one-month gain in 12 years.

That has been a boon for energy companies, which have led the market higher this year after trailing for much of the previous decade. Exxon Mobil (ticker: XOM) stock has soared 58% this year, and BP (BP) is up 34%.

But escalating energy prices are a draw on several other industries. Consumer goods get more expensive because it costs more to truck them to warehouses and stores.

“Higher commodity and freight cost impacts combined were a 400 basis point hit to gross margins,” said Procter & Gamble (PG) CFO Andre Schulten on the company’s earnings call last month.

Airlines get pinched, too, because fuel can account for about one-fifth of their expenses. Delta Air Lines (DAL), for instance, said on its latest earnings call that high fuel prices “will pressure our ability to remain profitable in the December quarter.”

“At present time, we’re expecting a modest loss in the fourth quarter with crude prices driving that up nearly 60% year-to-date and more than 15% just over the last month,” said CEO Ed Bastian.

Companies that make or process fuels and chemicals often run on natural gas. Refinery operator Valero Energy (VLO) said that its refinery operating expenses rose 6% in the third quarter largely because of higher natural gas prices. And any other business—including office work—that uses substantial amounts of electricity can be hurt when energy prices rise. Natural gas now accounts for the largest share of U.S. electricity generation.

Industrial companies can be hit too, as their operating expenses rise. Processed fuels used in manufacturing—things like oils, greases, natural gas, and diesel—are on average 34% more expensive than they were a year ago, according to the PPI. That, along with supply-chain problems around the world, are causing some industrial companies to warn investors that their margins could be hurt.

German chemicals company BASF (BASFY) said that high natural gas prices cost it 600 million euros in the first nine months of the year, but that October prices increases would make its operations even more expensive.

“Throughout basically all value chains, our suppliers, our customers and we ourselves continue to be confronted with increasing raw material, energy and transportation costs, supply chain constraints and the related and largely unforeseeable issues with material availability,” said CEO Martin Brudermüller on the company’s latest earnings call.

It’s a global problem that won’t be going away soon, and one that consumers are starting to feel too.

#### **Slows the U.S. economic recovery and guarantees recession.**

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

The U.S. economy is facing a new threat: rising energy prices.

Crude oil has risen 64% this year to a seven-year high. Natural-gas prices have roughly doubled over the past six months to a seven-year high. Heating oil has risen 68% this year. Prices at the pump are up nearly a dollar over the past 12 months to a national average just over $3 a gallon. Coal prices are at records.

Higher energy prices could push up inflation in coming months, damp consumer spending on other products and services, and ultimately slow the U.S. recovery, economists say.

“For consumers it’s like a tax,” economist Kathy Bostjancic of Oxford Economics said of the price increase. While consumers will likely be squeezed, the energy-price rise “would have to be extreme and prolonged” to halt the economic recovery, she added. More likely, “we would just see growth decelerate more or a longer pause before growth resumes, and that we just get a bit stickier inflation in the meantime.”

Andreas Steno Larsen, an analyst at Helsinki-based Nordea Bank ABP, is more pessimistic. He said this year’s rise in energy prices has caused him to cut his estimate for U.S. growth next year to 1.5% from 3.5%. While he believes oil and gas prices will remain flat in coming months, he also sees a worst-case scenario in which they rise by another 40% some time next year, enough to push the U.S. and global economy into a brief recession in mid-2022.

The higher prices are being driven by rising demand and tight supplies. As the pandemic fades and consumers around the world step up spending, factories and service providers are ramping up production, which requires energy. Oil supplies are tight because oil-exporting countries have decided to increase production in measured steps instead of opening the taps more widely.

#### Economic decline causes interstate war.

Brands ’21 [Hal and Michael Beckley; September 24; Global Affairs Professor at Johns Hopkins University; Political Science Professor at Tufts University; Foreign Policy, “China Is a Declining Power—and That’s the Problem,” <https://foreignpolicy.com/2021/09/24/china-great-power-united-states/>]

Slowing growth makes it harder for leaders to keep the public happy. Economic underperformance weakens the country against its rivals. Fearing upheaval, leaders crack down on dissent. They maneuver desperately to keep geopolitical enemies at bay. Expansion seems like a solution—a way of grabbing economic resources and markets, making nationalism a crutch for a wounded regime, and beating back foreign threats.

Many countries have followed this path. When the United States’ long post-Civil War economic surge ended, Washington violently suppressed strikes and unrest at home, built a powerful blue-water Navy, and engaged in a fit of belligerence and imperial expansion during the 1890s. After a fast-rising imperial Russia fell into a deep slump at the turn of the 20th century, the tsarist government cracked down hard while also enlarging its military, seeking colonial gains in East Asia and sending around 170,000 soldiers to occupy Manchuria. These moves backfired spectacularly: They antagonized Japan, which beat Russia in the first great-power war of the 20th century.

A century later, Russia became aggressive under similar circumstances. Facing a severe, post-2008 economic slowdown, Russian President Vladimir Putin invaded two neighboring countries, sought to create a new Eurasian economic bloc, staked Moscow’s claim to a resource-rich Arctic, and steered Russia deeper into dictatorship. Even democratic France engaged in anxious aggrandizement after the end of its postwar economic expansion in the 1970s. It tried to rebuild its old sphere of influence in Africa, deploying 14,000 troops to its former colonies and undertaking a dozen military interventions over the next two decades.

#### Economic decline ensures leadership turnover.

Brückner ’19 [Markus and Hans Grüner; October 31; Economics PhD and Professor at Australian National University, External Consultant to IMF and World Bank; Economics PhD and Professor at the University of Mannheim, External Consultant to European Central Bank; Public Choice, “Economic growth and political extremism,” no. 185]

Abstract

We argue that the growth rate, but not the level of aggregate income, affects the support for extreme political parties. In our model, extreme parties offer short-run benefits to part of the population at the expense of a minority. Growth effects on the support for such parties arise when uncertainty exists over whether the same subset of individuals will receive the same benefits in the future. More people are willing to take political risks if economic growth is slow. Based on a panel of 16 European countries, our empirical analysis shows that slower growth rates are associated with a significant increase in right-wing extremism. We find no significant effect of economic growth on the support for extreme left-wing parties.

1 Introduction

Distributional consequences are associated with political extremism, both in the short run and in the long run. Extreme political parties often propose to redistribute resources away from specific subgroups of society, such as the rich, ethnic minorities, or citizens living in specific regions. This paper analyzes the impact of economic growth on the support for extreme political parties in western democracies. We argue that the growth rate, but not the level of aggregate income, affects the support for extremism.

In the first part of our paper, we discuss three alternative explanations for why an increase in the economic growth rate reduces the support for extreme political parties. Two well-known explanations are related to retrospective voting and behavioral effects, the latter meaning that voters may react more strongly to changes in than to levels of economic well-being. The third, novel explanation is that parties with extreme political platforms are perceived to create considerable uncertainty about the future distribution of income.

We develop a simple game-theoretic model that analyzes that uncertainty effect. In our model, extreme political parties offer short-run gains from redistribution to a group of individuals. However, the same individuals also face long-run losses owing to the higher income risk that is associated with an extreme regime.1 The model permits a comparative static analysis with respect to several key variables of interest. The growth rate is associated with larger future income risk. Such risk reduces the number of voters favoring extreme parties. The level of aggregate income has no effect on the support for extremism. Income inequality raises support for redistribution and affects the impact that a change in the growth rate has on the support for extremism.

An important feature of our model is that the effect of economic growth on the support for extremism depends on uncertainty of future income redistribution. If redistributive policies are perceived as predictable—in the sense that the same group will have income taken away from it in the future—then the political support for an extremist party is unaffected by growth.

In the empirical part of our paper, we estimate the relationship between economic growth and the support for extreme political parties using a panel dataset comprising 16 European countries. Our dependent variable is a survey-based measure, compiled by Euro-barometer, of respondents' support for extreme right-wing parties and extreme left-wing parties. We use that data, which spans more than three decades and contains entries on a semi-annual frequency, to estimate the effects of economic growth on the support for extremism. Our empirical analysis shows a significant negative effect of real per capita GDP growth on the support for extreme right-wing parties: controlling for country and time fixed effects, a one percentage point decline in real per capita GDP growth increases the vote share of extreme right-wing parties by up to one percentage point. We document that the negative effect of economic growth on the support for right-wing extremism is robust across estimation techniques and model specifications. We do not find a systematic effect of growth on the support for left-wing extremism.

A possible explanation for the differential effects between left-wing and right-wing extremism that relates closely to our theoretical model is that right-wing extremism might be associated with more uncertainty over what groups will be subject to income expropriation in the future. Left-wing extremism is associated with income redistribution, but little uncertainty exists over its target. Communist doctrine (see, for example, the Communist Manifesto by Marx and Engels 1848), envisions a classless society; i.e., a society wherein incomes are distributed equally. Over the past century, extreme left-wing parties have followed closely that doctrine by proposing to redistribute incomes from rich to poor; as opposition parties they have voted against laissez faire policies and, when in power, they have implemented programs that reduced the wealth and income prospects of the rich (see, e.g., Brown 2010).

Right-wing extremism, in contrast to left-wing extremism, does not advocate a classless society. Instead, it often is associated with discrimination against specific groups of society for racial, religios, political or other reasons.2 An extreme case of a murderous and discriminatory regime was the German fascist rule during the first half of the 20th century. One can see it as a direct consequence of the Nazi party's "Fuhrerprinzip"—"the principle of unconditional authority of the leader" (Bernholz 2017, p.9)—which created considerable uncertainty over who might be stigmatized, imprisoned or killed in the future.3 Indeed, from the Nazi period we know that various groups were stigmatized for different reasons4 and that stigmatization also was particularly erratic.5,6

The empirical analysis of our paper is related to Stevenson (2001), who examines the determinants of aggregate policy preferences in a panel of 14 European countries. One of Stevenson's main findings is that declines in economic growth cause policy preferences to shift to the right, while increases in economic growth cause policy preferences to shift to the left.7 Our paper differs from Stevenson in at least three important aspects. First, in contrast to Stevenson, we show that our empirical results are robust to controlling for country fixed effects, meaning that our results also hold at the within-country level, and not just in cross-section. Relatedly, Acemoglu et al. (2008, 2009) showed that the cross-country relation between income and democracy turns insignificant when country fixed effects are entered into the econometric model. Second, we provide evidence that our empirical findings reflect a causal effect of economic growth on political extremism. We show that our main findings are robust to estimating dynamic models that enable to test for Granger causality; and we also show that the main findings hold with an instrumental variables approach. Third, we distinguish in our empirical analysis between extreme right-wing and extreme left-wing parties. That distinction matters: a robust negative effect of economic growth is found on the support for extreme right-wing parties, whereas no systematic effect exists for the support of extreme left-wing parties. Our finding of a significant negative effect of economic growth on the support for right-wing extremism is in line with the finding of Bromhead et al. (2012), who show that the vote share of right-wing extremists during the Great Depression was significantly larger in those countries that experienced a more severe economic crisis. Using subnational data for 218 European regions during 1990-2016, Rao et al. (2018) find a significant negative effect of regional output on the vote share of extreme right-wing parties, but no signicant effect on extreme left-wing parties.

**Leadership turnover causes nuclear war.**

Bertoli ’18 [Andrew, Allan Dafoe, and Robert F. Trager; May 9; PhD and International Relations Professor at IE University, Spain; PhD and International Relations Professor at UCLA; Political Science Professor at UCLA; Journal of Conflict Resolution, “Is There a War Party? Party Change, the Left–Right Divide, and International Conflict,” vol. 63, no. 4]

Is the likelihood that a democracy will take military action against other countries largely influenced by which party controls the presidency? Many believe so (Palmer, London, and Regan 2004; Arena and Palmer 2009; Clare 2010). In modern American politics, one party is consistently identified as more hawkish than the other. Surveys have revealed that Republican voters consistently prefer more aggressive policies (Eundak 2006; Trager and Vavreck 2011; Gries 2014). Moreover, many believe that Al Gore, had he been elected, would not have invaded Iraq like President George W. Bush did (Jervis 2003; Lieberfeld 2005), and that the foreign policies of Hillary Clinton and Donald Trump would be similarly opposed (Paletta 2016).

Nevertheless, it is very difficult to determine whether the party in control of the presidency really has an important impact on foreign policy due to the selection of parties into particular domestic and international contexts. Put simply, which party controls the presidency is not random. For example, the victory of George W. Bush in 2004 can be attributed to a number of domestic and international factors at the time, including the American public's heightened concerns over national security following September 11. Similarly, Barack Obama's success in 2008 was influenced by problems at home and a decrease in public willingness to engage in military adventurism. Therefore, an observational analysis would likely be biased by such selection processes. Thus, even if countries behave differently when certain parties control the presidency, it would be very difficult to know if that difference is explained by the parties or by the environments into which the parties are selected.

In principle, we could overcome this problem by running an experiment in which we randomly assigned countries to be ruled by leaders from different parties. Such an ideal research design would avoid the confounding problem, making it possible to test whether countries tend to be more or less aggressive when certain parties control the presidency. Experiments are unmatched in their ability to identify causal effects, so this type of study could greatly improve our understanding of how electing candidates from different parties influences foreign policy.

We approximate this ideal experiment by using a regression discontinuity (RD) design. Specifically, we look at close presidential elections where a candidate from one party barely defeated a candidate from a different party. Such a design works if it is close to random which party won in these cases, a premise which is plausible given the inherent randomness in large national elections. Thus, we use close elections to get data that are similar to what would result from a real experiment. Such natural experimental designs are extremely rare in the study of war and thus warrant attention in the exceptional instances when they do occur.

We run two main analyses. First, we look at whether countries tend to be more (or less) aggressive when presidential candidates from right-wing parties barely defeat candidates from left-wing parties. This quasi-experimental comparison involves a small sample size (n = 29), but we still find noteworthy evidence that electing right-wing candidates increases the likelihood that countries will initiate high-level military disputes against other states. Second, to increase our statistical power, we examine cases where candidates from incumbent parties barely won or barely lost to candidates from challenger parties (n = 36). Specifically, we test whether countries experienced a larger change in their propensity to engage in military disputes when the candidate from the challenger party barely won. Thus, our key outcome of interest here is how much countries deviated from their prior levels of dispute involvement. We find statistically significant evidence that electing candidates from challenger parties causes countries to experience a larger change in their propensity to engage in military conflict with other states.

Upon further examination of the data, we find that the results from our second test are largely explained by a tendency for candidates from challenger parties to initiate military disputes in their first year in office. Thus, these findings support the theory that major leadership transitions tend to increase the chances of state aggression, either because new leaders lack the experience to manage international crises effectively or because they need to prove their resolve by acting tough.

This article makes several important contributions to the study of international relations. First, there is a long-standing debate in political science over whether leaders have an important independent impact on interstate conflict or whether their influence is largely constrained by strategic realities (Byman and Pollack 2001; Mearsheimer and Walt 2003; Jones and Olken 2009; Chiozza and Goemans 2011; Saunders 2011; Horowitz, Stam, and Ellis 2015; Croco 2015). This study provides quasi-experimental evidence that leaders do have a meaningful impact on foreign policy. Second, the results presented here suggest that domestic political ideology can spill over into the international realm. One of the main explanations for the democratic peace is that democracies act in accordance with their domestic norms when it comes to foreign policy (Morgan and Campbell 1991). The findings presented here support that hypothesis by showing that left-wing leaders do tend to behave more dovishly in international affairs. Third, these results suggest that we should be alert to the potential for interstate conflict when right-wing leaders are in office, as well as after elections where party control of the presidency changes hands.

This study is also notable because it is one of the first in the international relations literature to use a preanalysis plan. Prior to looking at any of the results, we pre-registered the main tests that we planned to conduct in this article. Our motivation here was to tie our hands, so that there could be no question of sifting through the data to find the statistical tests that produced the most interesting or significant results. The temptation for scholars to run many tests and then report the ones that are most "interesting" can lead to misleading findings. This danger has attracted a great deal of attention across scientific fields over the last decade, and it is seen by many as a major problem for quantitative research (Nosek et al. 2015). The purpose of preanalysis plans is to help ensure that research remains credible.

The article proceeds as follows. We first discuss the theoretical bases for the claim that party control of the presidency influences conflict decisions and review the existing empirical work on this subject. We then outline the research design in more detail. Next, we conduct design checks to verify that the research design is appropriate. We then present the results for party ideology. After that, we test whether party turnover leads to changes in the likelihood of state aggression. We then discuss the findings and conclude.

Leaders, Parties, and International Conflict

In recent years, much debate has arisen over whether leaders influence the chances of interstate conflict, and if so, how. A major question in this research program is whether leaders from certain parties are more likely to behave aggressively in foreign affairs or whether the ideology of the leader is largely unrelated to state behavior.

The theory that party control of the presidency influences the chances of interstate conflict can be derived from three premises. The first is that conservatives and liberals hold different views about the legitimacy or efficacy of military force. This assumption is backed by cross-national survey data showing that liberals tend to be more concerned with fairness, duties of care, and preventing harm, while conservatives tend to favor the preservation of social orders, the purity of sanctified objects, and loyalty to in-groups (Graham, Haidt, and Nosek 2009; Boer and Fischer 2013). Several studies have also found that these differences in moral foundations influence foreign policy attitudes (Schwartz 1992; Kertzer et al. 2014; Kertzer and Rathbun 2015). In particular, liberals are more "prosocial" and seek compromise internationally, in contrast to conservatives, who are more "proself” and therefore bargain more aggressively (Schwartz, Caprara, and Vecchione 2010).

The second assumption is that general differences in party attitudes appear at the elite level. There are two ways that these differences could affect the behavior of political elites. First, the political leaders could sincerely hold beliefs and preferences similar to those of their constituents, leading them to have different foreign policy strategies and goals. Alternatively, the leaders could have different beliefs and attitudes than their constituents, but nonetheless recognize that they must carry out their supporters' agenda if they hope to stay in office.

Although it is difficult to know the extent to which leaders true foreign policy preferences reflect those of their constituents, several observational studies show that changes in a leader's base correlate with changes in their approach to international affairs. First, Mattes, Leeds, and Carroll (2015) find that changes in the supporting coalitions of leaders predict foreign policy change, measured by the policy positions taken by nations in the United Nations General Assembly. Rathbun (2004) and Haas (2005) come to a similar conclusion looking at support for peace-enforcement missions, and Solingen (2009) finds that economic interests and the ideologies of partisan coalitions influence nuclear weapons policy. Therefore, even when a leader has different foreign policy beliefs and goals than the rest of the party, there may still be pressure to toe the party line.

The third assumption is that leaders from different parties can act on their divergent preferences. This means that international and domestic constraints on leaders cannot be so powerful that they largely limit leaders to a single course of action. For example, some realists argue that there is little room for leaders to have an independent impact on foreign policy because they all need to defend and advance the national interest (Mearsheimer 2001; Mearsheimer and Walt 2003). Regarding domestic constraints, Trager and Vavreck (2011) find that right-wing and left-wing leaders can have incentives to hide their "types." Liberal leaders may be forced to adopt more hawkish foreign policies because they fear that their moderation will sometimes be interpreted as weakness (Schultz 2005), whereas conservative leaders may have incentives to adopt more moderate policies because the public would likely judge them unduly aggressive if they acted hawkishly. Thus, leader preferences and political incentives could actually push in opposite directions.

Several previous studies have examined whether right-wing leaders tend to behave more aggressively in foreign policy than left-wing leaders. Using logistic regression on panel data covering eighteen parliamentary democracies from 1949 to 1992, Palmer, London and Regan (2004) find that right-wing governments are more likely to be involved in military disputes, while left-wing governments are more likely to see the disputes in which they are involved in escalate. Their explanation is that right-wing parties favor using force more often, so their leaders will engage in military conflict more often. However, when left-wing leaders engage in conflict, they will need to emerge victorious to justify their involvement, so they will be more likely to bargain tough and escalate if necessary. These researchers find that a shift from left to right government increases the chances of dispute initiation by about 50 percent and that left-wing governments are about twice as likely to escalate conditional on being in a dispute. Second, Arena and Palmer (2009) apply a probit model to panel data covering twenty stable democracies from 1960 to 1996 and find that right-wing governments are more likely to initiate disputes. Their theory is based on the finding that right-wing leaders are less likely to be removed from office for using force unwisely than left-wing leaders. This makes right-wing leaders more likely to start international conflicts in the hopes of increasing their domestic support. Third, Clare (2010) applies logistic regression to twenty parliamentary democracies from 1950 to 1998 and finds that parliamentary democracies are about twice as likely to initiate disputes when they are controlled by right-wing parties.

The central limitation of these studies is that their conclusions rest on the results of regression analysis on cross-national panel data. Such an approach is not guaranteed to eliminate bias from omitted variables. In fact, the results from this type of analysis can be badly biased, even when researchers control for a wide range of important covariates (Clarke 2005). In some cases, controlling for potential con-founders can even amplify bias (Pearl 2013). Thus, the results from these past studies should be interpreted as a tentative first cut at answering this question rather than the final word on the subject.

The design-based approach that we employ in this article gets around the omitted variable bias problem because the as-if random assignment of leaders to office should create balance across observable and unobservable pretreatment characteristics. In many other scientific fields, the results of conventional observational analyses have been overturned by design-based studies. For example, the validity of hormone replacement therapy and a variety of theories in development economics, psychology, and elsewhere have been overturned when experimental and quasi-experimental approaches were brought to bear (Women's Health Initiative 2002; Freedman 2009; Dunning 2012). Therefore, the tests that we present in this article provide an important step forward in our understanding of the empirical relationship between party control of the presidency and interstate conflict.

Before moving on to our research design, though, we should first lay out the hypotheses that we want to test. As we detail in our preanalysis plan, we started this project with the belief that leaders do matter and that electing leaders from different parties does affect the likelihood of state aggression. Given this prior, we formulated two main hypotheses. The first is the party ideology hypothesis, which predicts that electing leaders from right-wing parties will increase the likelihood of state aggression. The second hypothesis is highly general and speaks directly to the question of whether leaders matter in international relations. It posits that electing a leader from the incumbent party will lead to less change in international dispute behavior than electing a leader from a challenger party. We refer to this as the incumbent/challenger hypothesis.

Party Ideology Hypothesis: Electing presidential candidates from right-wing parties will make countries more aggressive than electing candidates from left-wing parties.

Incumbent/Challenger Hypothesis: Electing candidates from challenger parties will lead to a greater change in state aggression than electing candidates from incumbent parties (the absolute difference in aggression between presidential terms will be greater when there is party turnover).

One issue that is related to the incumbent/challenger hypothesis is that new leaders may be particularly likely to act aggressively early in their terms. There are several reasons why this might be the case. First, new leaders may lack the experience to manage international crises effectively, making it more likely that disagreements with other states will turn into military conflicts (Potter 2007). Second, new leaders may be more likely to want to show the international community that they are willing to use force abroad, which could strengthen their bargaining leverage in future international negotiations (Wolford 2007; Dafoe 2012). Third, new leaders may want to send a signal to their domestic audiences that they are tough when it comes to foreign affairs, which could increase their popularity at home. This idea that leaders are more likely to get involved in military disputes when they first arrive in office has received support from cross-national logistic regression analysis on panel data (Gelpi and Grieco 2001) and a mixed-methods analysis that looks at American presidents (Potter 2007).

While most of the existing theory and research on leadership transitions has focused on cases where new leaders come to office, a similar logic might be applied to party control of the presidency, particularly when it comes to the reputational mechanisms. New leaders who are from the same party as the old one should be able to associate themselves with the previous leader's reputation, giving them less of a need to signal their resolve. On the other hand, when leaders from challenger parties come to power, there should be less certainty that the new leader will have an approach to foreign policy that is similar to the old one's. In short, when party control of the presidency changes hands, it marks a more significant leadership transition (Mattes, Leeds, and Matsumura 2016). Thus, even if parties tend to behave pretty similarly across ideologies, we might still find that leaders from challenger parties might be much more aggressive early in their tenures.

Challenger Aggression Hypothesis: Electing candidates from challenger parties will lead to an increase in state aggression when the new leader takes office.

We did not preregister the challenger aggression hypothesis prior to looking at the results, but this was the only hypothesis we tested outside of those we preregis-tered. Thus, the findings do not reflect data mining. Nevertheless, some readers may wish to interpret the test of this particular hypothesis as exploratory.

Research Design

There are several different design-based approaches that could be used to investigate how leaders affect state behavior. One would be to look at all cases of leadership turnover and compare how countries behaved before and after the leadership change. This research design rests on the idea that countries are comparable before and after leadership transitions. This assumption may be plausible in some cases, but in others, it is clearly invalid. For example, the periods before and after normal electoral leader transitions are usually not comparable. Many countries elect the leader and members of the legislature at the same time, making it difficult to determine the effect of leadership change by itself. Similarly, looking at cases when leaders were forcibly removed from office also has its limitations, since leaders are usually removed at times of extreme political tension. Likewise, leadership changes that are caused by assassinations are not likely to provide valid comparisons. The new leader will probably have to deal with a more complicated political situation in the aftermath of the assassination, making the beginning of their term much different from the end of the previous leader's term.

Another potentially promising approach would be to focus on changes in leadership that resulted from the natural deaths of leaders. The timing of natural leader deaths should be fairly unrelated to the domestic and international environments. Moreover, the legislature will typically not change following the natural death of a leader, making it much easier to isolate the independent effect of leaders on foreign policy. However, the natural death approach is not well-suited for this particular study. The reason is that the new leader almost always comes from the same party as the old leader. Thus, this exogenous change in leadership does not provide much leverage in determining how party control of the presidency affects interstate conflict. This research design could be useful in looking at other types of variation in leaders, such as age, military experience, and occupational background. However, it is not a promising design for this study.

The approach that we take instead is to use an RD design. RD involves comparing units that barely surpassed and barely fell short of an important cut point that influenced treatment assignment. For example, if there was a test where everyone who scored a fifty or higher got a scholarship, researchers could assess the effects of getting the scholarship by comparing the students who scored fifty and fifty-one to the students who scored forty-eight and forty-nine. So long as there is no sorting at the cut point, as could happen if the graders had opportunity and motive to nudge some test takers above the cut point, it should be close to random which of these students won the scholarship, since they were all on the verge of getting it (Lee 2008).

Close elections provide an excellent opportunity to use RD analysis. Given the inherent randomness in the electoral process, whether candidates barely win or barely lose in close elections is plausibly as-if random (Eggers et al. 2015).1 Political scientists have used RD to study questions like how winning an election influences a party's likelihood of winning the next election (Lee 2008) and how winning an election affects a candidate's wealth later in life (Eggers and Hainmueller 2009). Scholars have also used RD to test how economic and political outcomes differ when Republican candidates for mayor barely defeat or barely lose to Democratic candidates (Pettersson-Lidbom 2008; Gerber and Hopkins 2011; Beland 2015; de Benedictis-Kessner and Warshaw 2016).

In this article, we look at close presidential elections. To our knowledge, this study is the first to apply RD specifically to presidential elections. For our analysis, we followed the procedures that were outlined in our preanalysis plan (which is available at the end of the Online Appendix). We will briefly summarize these procedures in the remainder of this section.

Our Statistical Approach

There are two general ways to analyze an RD. The first, known as the continuity approach, involves plotting two smoothing functions on either side of the cut point and estimating the difference at the cut point (Voeten 2014). This method should be used when the score, or "forcing variable," is continuous. The second method is the local-randomization approach, appropriate when the forcing variable is discrete (Lee and Card 2008; Cattaneo, Frandsen, and Titiunik 2015; Bertoli 2017). It involves drawing a window around the cut point and treating the units within that window like they were in a randomized experiment.

Since the forcing variable in this study is vote share in a presidential election, which is essentially continuous, we would normally use the continuity approach. However, we discovered in our preanalysis plan that the continuity approach had a type 1 error rate (false-positive rate) of 12 percent for this study, which we believe is due to our small sample size. Since the type 1 error rate should be 5 percent by design, we chose not to use this method, since it was overly likely to give us significant results. Instead, we used the local-randomization approach, which we found had a type 1 error rate of about 4 percent.

Defining Close Elections

We considered elections to be close if the top two candidates were within 2 percent of the cut point (48 percent to 52 percent range). Data on close races were available in the data set constructed by Bertoli, Dafoe, and Trager (2018). This data set includes every democratic election between 1815 and 2010, where democracies are defined as countries with Polity IV Institutionalized Democracy scores above five. The data set provides information on the top two candidates including their names, parties, and vote shares in the election. If there were more than two candidates running in an election, we focused only on the votes for the top two candidates, rescaling their vote shares accordingly. In cases where there were runoffs, we used their vote shares from the runoff rather than the initial election. We also excluded close elections in nondemocracies because we were concerned about fraud in these cases. Given the possibility of fraud, we did not feel confident in assuming that the outcomes of these elections were as-if random.

One complication that arose is that the United States elects presidents through the electoral college. This system makes it possible for candidates to lose the popular vote but still win the election if they defeat their rival in the electoral college. To deal with this issue, we counted the electoral college vote rather than the popular vote when looking at the United States. This decision is consistent with other similar studies (Bertoli, Dafoe, and Trager 2018). For every other country, we used the popular vote.

Measuring Party Ideology

To identify parties as left or right-wing, we evaluated the parties against each other according to their positions at the time of the election on social questions associated with liberalism and conservatism. Parties were judged further to the right when they expressed support for "traditional values," national, religious, racial, or ethnic in-groups, or the benefits of authority and traditional sources of authority such as a monarchy. Parties were judged further to the left when they expressed inclusive sentiments, a duty of care for vulnerable groups, and support for democratic principles. Secondarily, we evaluated parties as left or right on economic policy preferences. Advocacy for wealthier interests placed a candidate further to the right, and advocacy for the less well-off is associated with the left. These two social and economic dimensions are highly correlated, with the principal exceptions coming from communist and postcommunist countries. In these cases, the primary social dimension determined the left-right coding. When parties could not be easily classified as left or right according to these metrics, we excluded the election from the ideology test.

Main Analyses

We looked at two different types of close elections. The first were close elections between right-wing and left-wing parties, where it was essentially random whether the presidency was controlled by a leader with a right-wing or left-wing ideology. In total, we have twenty-nine close elections between right-wing and left-wing parties. The second set of close elections that we analyzed was narrow races between an incumbent and challenger party. In these cases, it was as-if random whether the country experienced party continuity or change in the executive branch. We have thirty-six of these close elections in our data set. For this group of cases, we were particularly interested in testing whether a change in party control of the presidency increased the likelihood of a change in state aggression.

Although our sample sizes are not large, the power tests that we ran at the beginning of this project indicated that we had a good chance of picking up a medium-sized or large effect. For the test of left- versus right-wing parties, we determined we would correctly detect (at a = .05) a medium-sized effect (0.5 standard deviation [SD]) 30 percent of the time, a large effect (0.8 SD) 54 percent of the time, and a very large effect (1.2 SD) 82 percent of the time. In the incumbency power analysis, we found that we would detect a medium-sized effect 55 percent of the time, a large effect 93 percent of the time, and a very large effect over 99 percent of the time. Also, if the effects were small or nonexistent, the power tests indicated that we would be able to establish confidence intervals that were precise enough to rule out very large (+1.2 SD) positive and negative effects.2

Moreover, although the results turn out to be significant at conventional levels, we encourage readers to avoid interpreting p values as either significant (p < .05) or not while reading this article and to bear the bias-variance trade-off in research design in mind. Almost all quantitative research in international relations lacks any claim to strong causal identification, being based on observational data and linear adjustment of largely ad hoc covariate sets. By contrast, the design presented here has a strong claim to causal identification and unbiasedness, providing a crucial complement to the vast majority of the literature which does not. Thus, since p values provide a continuous measure of how inconsistent the evidence is with the null hypothesis, a higher p value in an unbiased design may actually reflect more evidence against the null than a lower p value in a biased one. Small p values (e.g., p < .2), even if not significant at conventional standards, also provide important evidence in these contexts.

In addition to our two main tests, we examined whether candidates from challenger parties are more likely to initiate military disputes at the beginning of their terms than candidates from incumbent parties, which would be consistent with the theory that major leadership transitions make state aggression more likely. Our motivation for running this test came from reading Wolford (2007), Dafoe (2012), and Wu and Wolford (2016). These articles advance a compelling theory and intriguing empirical evidence that new leaders have reputational incentives to act tough when they first come to office. We find strong evidence consistent with this hypothesis.

Outcomes

We measured aggression using the number of militarized interstate disputes (MIDs) that a country initiates. These disputes are cases where countries explicitly threatened, displayed, or used force against other states (Ghosn, Palmer, and Bremer 2004). Specifically, we look at the number of these disputes that a state initiated starting from when the leader took office and ending at the date that the winner of the next election was scheduled to start. In cases where leaders were replaced part of the way through their term, we used the day that they left office instead. Since the length of time that candidates held office varied, we divided the total number of disputes by the duration of the time period. Thus, the unit of measurement is military disputes initiated per year in office.

We use slightly different versions of the outcome variables for our different tests. For the ideology test, we use military disputes initiated per year, as described in the previous paragraph. For the main incumbency test, we use the absolute change in military disputes initiated per year from the previous term. We use this variable because we are interested in evaluating whether there was a larger absolute change in military aggression when the challenger party barely won. Thus, the measure is:

Absolute change in military aggression =|MIDs/year during winner's term

—MIDs/year during previous term|

In other words, we are testing whether challenger parties gaining control of the presidency makes countries with high levels of prior aggression more likely to experience a decrease in dispute initiation and countries with low levels of prior aggression more likely to experience an increase in dispute initiation. We conduct a one-sided test for this analysis, since we expect that the absolute change will be larger for countries where the challenger party barely wins. Lastly, for the exploratory test about whether challenger candidates tend to be more aggressive when they first take office, we look at the number of disputes that each country initiated in the first year of the new presidential term.

Across these tests, our main outcomes are (1) military disputes initiated and (2) high-level military disputes initiated. High-level disputes are cases where countries used force against other states or entered into international wars.3 Following the preanalysis plan, we examine high-level disputes, which constitute actual uses of force, separately because the factors that drive posturing may be different from those that drive actual violence. As secondary outcomes, we look at (3) all disputes that countries engaged in and (4) all high-level disputes that countries engaged in. These cases include disputes that countries did not start but participated in nonetheless.

Estimation

We employ two estimation strategies. Our primary statistical analysis involves t tests. This is a simple approach, recommended for its parsimony and robustness, which is appropriate given the assumption that close elections were as-if random (Dunning 2012). As a secondary test, we plot the outcome as a function of the electoral result and estimate how the expected value of the outcome changes at the cut point using local linear regression, as is often done for RD designs. An advantage with using this approach is that it makes it possible to visualize how outcomes change at the cut point.

Design Checks

Our research design rests on one main assumption, necessary for internally valid estimates: the outcomes of the close elections considered in this study are as-if random. For example, the design would be invalid if any candidates could precisely manipulate their vote shares around the cut point, such as by counting the votes and adding just enough to win. This assumption should be valid for democracies provided that elections are fair (Eggers et al. 2015).

A second "representativeness" assumption facilitates generalizing from our results, and this is that the democracy years experiencing close elections are not dissimilar to democracy years in which elections are not close. If this assumption is reasonable, then we can generalize from our results to all democracy years. However, if the countries that had close elections are not representative of other democracies, then the causal estimates that we find may not reflect broader patterns in international relations.

We can test the as-if randomness assumption in two ways. First, we can check that the samples are balanced on important pretreatment characteristics. Figure 1 plots the balance using two-sided t tests. The graph on the left shows that countries where right-wing parties barely won were very similar to countries where left-wing parties barely won, and the graph on the right shows that countries where incumbent parties barely won were similar to countries where challenger parties barely won. In Figure 1, we look at twenty-four covariates, and not a single one is significantly imbalanced. Thus, the data are consistent with the assumption that who won these close elections was as-if random.

[[FIGURE ONE OMITTED]]

[[FIGURE TWO OMITTED]]

Second, we can test whether there is balance in the number of cases on either side of the cut point. Figure 2 shows how close right-wing and incumbent parties were to winning the presidency. For the twenty-nine close elections between right-wing and left-wing parties, there were sixteen cases where the right-wing party won and thirteen cases where the left-wing party won (p = .71). Similarly, for the thirty-six close elections between incumbent and challenger parties, there were seventeen cases where the incumbent party won and nineteen cases where the challenger party won (p = .87). Thus, there is no evidence of sorting in either sample.

[[FIGURE THREE OMITTED]]

We can also evaluate the external validity assumption by comparing the two samples to the broader population of all democracies since 1815. Figure 3 uses box-plots to compare our samples to the broader population with respect to covariates related to military power. The comparisons show that our samples are very similar to the broader population of democracies from 1815 to 2010. Thus, at least with respect to these covariates, there is little reason to believe that either of our samples consist of an idiosyncratic group of countries that would behave differently than most other democracies. Rather, the representativeness of our samples indicates that our results should be indicative of broader trends in international relations.

In sum, the outcomes of the close elections appear to be random, and the countries where the close elections happened are fairly representative of all other democracies. Therefore, the design appears to have worked very well. In the next two sections, we will look at how electing presidential candidates from different parties affects state aggression using this new empirical approach.

Results for Party Ideology

Our results indicate that right-wing parties tend to be more aggressive than left-wing parties. Table 1 shows the aggression levels of the countries that had close elections between right-wing and left-wing candidates. On average, the countries where right-wing parties barely won started .06 more disputes per year than countries where left-wing parties barely won. Similarly, they engaged in .10 more high-level disputes per year than countries where left-wing parties barely won. Given that the average duration of a presidential term for these countries is 4 years and 169 days, this adds up to .32 more disputes initiated and .43 more high-level disputes initiated over an average presidential term.

Figure 4 plots the estimates for the two main outcome variables along with the two other indicators of aggression. The confidence intervals are based on two-tailed t tests. They suggest that electing right-wing parties does increase state aggression, particularly when it comes to high-level disputes. Of course, all of these confidence intervals cover zero, so we cannot rule out zero effect with 95 percent confidence based on this analysis alone. The estimate most different from zero is of high-level disputes initiated (p = .25). For disputes initiated, the results appear to be more consistent with no effect (p = .64), as do the results for the supplemental tests of all disputes and all high-level disputes.

[[TABLE ONE OMITTED]]

[[FIGURE FOUR OMITTED]]

However, if we look at the specific disputes in more detail, the evidence that electing right-wing leaders increases state aggression grows stronger. While all the high-level disputes that the right-wing leaders engaged in involved unequivocal uses of force, the only high-level dispute that any of the left-wing leaders initiated is questionable and should probably be excluded. This dispute was between Costa Rica and Nicaragua in 1995, and it did not involve any military action by either country. Costa Rican police crossed the Nicaraguan border in pursuit of suspects and were arrested. Two days later, the Costa Rican police force retaliated by arresting two Nicaraguan police officers who had crossed the border "to get a drink of water." The two sides made a prisoner swap on the following day. If this case is dropped, then electing right-wing parties appears to lead countries to initiate . 12 more high-level disputes per year (p = .162).4

Moreover, the only reason that these results are not significant is because the United States (2001) is an outlier, which inflates the standard errors. We can address this issue by modifying the outcome to a simple indicator variable for whether countries initiated any high-level disputes (no = 0, yes = 1), which makes our test insensitive to outliers. The estimates then suggest that electing right-wing parties increases the chances that countries will initiate high-level military disputes by 25 percent (p = .041). Therefore, even though the initial tests were not statistically significant, they become more conclusive after we address some minor issues with the data.

Given the number of democracies in the world today, there may be enough close elections to get much more precise estimates a decade or two from now or maybe even after the next expansion of the MID data set. This design is definitely worth returning to in the near future. However, for the present, we will turn to a second test in the next section on more data that yields increased statistical power. This test provides further evidence that which party controls the presidency does affect the likelihood of state aggression.

Results for Incumbent versus Challenger Parties

The second test that we run compares cases where challenger parties barely defeated incumbent parties to cases where they barely lost to incumbent parties. In these cases, it was as-if random whether the incumbent or challenger party won. Thus, we can test how much military aggression changes when the party that controls the executive branch changes. The outcomes that we use for this test are the absolute changes in the military indicators between the term when the incumbent or challenger party barely won and the previous term. For this analysis, we use one-sided tests that assume that there will tend to be a larger change in military aggression when the challenger party barely wins.

Table 2 shows the absolute change in aggression levels for the countries that had close elections between candidates from incumbent and challenger parties. When the candidates from challenger parties barely won, the absolute change in disputes initiated per year was .031 greater than when candidates from incumbent parties barely won (p = .30; 26 percent increase from baseline). For high-level disputes, the difference is even more notable. The absolute change in high-level disputes initiated per year was .074 greater than when candidates from incumbent parties barely won (p = .046, 133 percent increase from baseline). The average length of the presidential terms for these data was 4.42 years, so this adds up to a difference of .33 high-level disputes initiated per presidential term. Figure 5 plots the confidence intervals for the aggression indicators.

This estimated effect is substantively large relative to other determinants of conflict that international relations scholars have analyzed. For example, past studies have found that revolutions increase the likelihood that countries will initiate military disputes by about 74 percent (Colgan 2010), arms transfers by about 60 percent (Krause 2004), and neutrality pacts with potential conflict joiners by about 57 percent (Leeds 2003). The effect of challenger parties winning appears to be in the ballpark of these estimates, although it is hard to nail down this effect very precisely because of the relatively small sample size.

Figure 6 illustrates the effect for high-level disputes across a greater range of margins of victory. As countries move from incumbent party victories (the points on the left) to challenger party victories (the points on the right), there is a large shift in the absolute change in high-level disputes initiated. Countries where the challenger party barely won experienced a much larger change than countries where the incumbent party barely won. Although this method of estimating the treatment effect was not the primary method that we discussed in our preanalysis plan, the results for this approach are fairly conclusive.

### 1AC – Federalism

#### Circuit splits over the filed rate doctrine makes enforcement incoherent.

First ’12 [Harry and Christopher Sagers; November 28; Law Professor at NYU; Law Professor at Cleveland-Marshall; Brief of Antitrust and Economics Professors, “McCray v. Fidelity National Title Insurance Company,” http://sblog.s3.amazonaws.com/wp-content/uploads/2013/02/McCray-Final-File-Copy-as-Filed.pdf]

Some courts, though not all, have found that this complex of theoretical considerations has no relevance as soon as a state adopts the simple expedient of a rate-filing system, even if it is identical to the unreviewed, file-and-use system that Ticor found so lacking. They do this on their view that the filed rate doctrine should apply in such cases, and in their view the filed rate rule precludes private remedies even where the agency engages in no actual review of rates filed.3 Amici are eager to undo this extraordinary elevation of form over theoretical substance, and to bring consistency to all cases in which states attempt to limit federal antitrust.

Footnote 3.

3 Not all courts so hold, and the Circuits are accordingly split. Compare Brown v. Ticor Title Ins. Co., 982 F.2d 386, 394 (9th Cir. 1992) (rejecting filed rate protection for state-filed rates), with Wegoland Ltd. v. NYNEX Corp., 27 F.3d 17, 20 (2d Cir.1994) (finding filed-rate protection for state-filed rates), H.J. Inc. v. Nw. Bell Tel. Co., 954 F.2d 485, 494 (8th Cir.1992) (same), and Taffet v. S. Co., 967 F.2d 1483, 1494 (11th Cir. 1992) (same).

Footnote 3 ends.

To be clear, Amici stress as the justification for certiorari not the lack of “active supervision” in and of itself, but the expansion of the heavily disfavored filed rate doctrine to state-filed rates, an expansion that creates serious theoretical tension. If “a doctrine [so] indefensible . . . should be narrowly construed,” as one leading antitrust authority has said, HERBERT HOVENKAMP, FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE § 19.6 (4th ed. 2011) (emphasis added), then there can be no call for expanding it in this way, beyond any traditional basis in the intent of the federal Congress, and in a way so far at odds with this Court’s theory of antitrust federalism. Accordingly, while there may be support for the view that federally filed rates can enjoy filed rate protection without actual review, and while some such support was cited below,4 it is inapt to this case.

Amici will explain three related reasons that the theoretical conflict renders certiorari appropriate. First, only this Court is likely to restore consistency across factual contexts that some lower courts have taken to be distinct and unrelated. Failure to find that consistency causes there to be inexplicably and undesirably different antitrust treatment of state regulatory regimes that do not differ in any respect relevant to any value of federalism or federal antitrust. Second, this Court will consider another matter this Term raising importantly similar issues, Federal Trade Commission v. Phoebe Putney Health Sys., Inc., 663 F.3d 1369 (11th Cir.), cert. granted 2012 WL 985316 (2012) (No. 11-1160). Consideration of both matters would complement one another, as they raise the same fundamental concern: what precisely should be required of state governments before they excuse private persons from federal antitrust liability. And finally, confusion of this central theoretical point caused the court below explicitly to break with a decision of the Ninth Circuit on essentially identical facts, Brown v. Ticor Title Ins. Co., 982 F.2d 386 (9th Cir. 1992). Amici submit that Brown properly applied this Court’s larger framework for balancing state regulation and federal antitrust.

III. REASONS FOR GRANTING THE PETITION

This case is not, as the court below took it to be, about minor points of detail within the widely disparaged “filed rate” doctrine, commonly associated with Keogh v. Chicago & Nw. Ry. Co., 260 U.S. 156 (1922). It has little to do with the since-repealed federal statute at issue in that case, or with any similar federal statute, or with Justice Brandeis’s views of the largely defunct Progressive-era rate and-entry regulatory regimes of which those statutes were a part.

Instead, this case is about federalism. Specifically, it is about what should be required before a state government excuses private persons from the federal antitrust laws. The court below forgot that “a state”—unlike the federal Congress— “does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . .” Parker v. Brown, 317 U.S. 341, 351 (1943).

The opinion below crystallized the central problem in the following, nearly hidden observation: while not denying that some of this Court’s state action cases seem hard to square with its decision, the court simply found “no apparent requirement to reconcile the filed rate and state action doctrines . . . .” McCray v. Fidelity Nat’l Title Ins. Co., 682 F.3d 229, 238 n.6 (3d Cir. 2012). The court gave no explanation for that view, cited two circuit opinions for it that are logically irrelevant,5 and was evidently unaware of judicial6 and academic7 authority for the seemingly self-evident point that antitrust scope doctrines should be consistent with one another. In fact there is a need for theoretical consistency, and certiorari is made appropriate by the court’s failure to seek it.

A. Serious and Unexplained Theoretical Conflict in the Scope of Antitrust

The decision below, when taken together with this Court’s Ticor decision, gives rise to the following puzzle. If State X and State Y both had title insurance regimes like those at issue in Ticor, then title insurers in both states would be fully subject to government antitrust remedies. Ticor so held. But the effect of a ruling like that below is to bar private damages remedies. So if State X did not have a ratefiling requirement, then private plaintiffs could challenge price-fixing by State X title insurers, but a rate-filing requirement in State Y would bar private challenges there, even though in every other respect the regulatory regimes remained identical. Nothing seemed relevant to filed rate protection below except for the tariff filing itself. In its absence, the filed rate doctrine would not apply, and Ticor would preclude state action immunity, making private damages actions possible.

The same result would hold even if both states’ regulators had the same power to enforce the same reasonable rate and non-discrimination rules, and even if both states explicitly authorized price-fixing by statute. Filed rate protection would still be unavailable, and Ticor would still deny state action immunity from private remedies. And it would be so even though the State Y filing system were exactly like the one found inadequate in Ticor—a file-anduse system in which the regulator never actually uses its power of post-filing review. The Third Circuit would preclude the federal remedies of Clayton Act § 4 in State Y but not State X, even though the only difference between them is State Y’s requirement to file a piece of paper that no one ever looks at.

This result is at odds with seventy years of this Court’s elaborate balancing of state and federal interests in antitrust cases, a framework that began in Parker in 1943. Where the Court has permitted states to deviate from the federal competition mandate, it has been solely to respect their sovereign interests in regulating trade within their borders. The states have no such interest in cases in which they do not in fact regulate. Accordingly, antitrust is relaxed in light of state policy only where the state itself has actively used its regulatory power. Ticor, 504 U.S. at 639-40; Midcal, 445 U.S. at 105-06.

Ticor, this Court’s last statement on the issue, remains its fullest theoretical elaboration. As Ticor explained, on a thorough canvass of the Court’s prior decisions, the Court’s purpose has never been “to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices.” The Court asks only “whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, [and] not simply by agreement among private parties.” Ticor, 504 U.S. at 634-35; see also id. at 633 (“Immunity is conferred out of respect for ongoing regulation by the State, not out of respect for the economics of price restraint.”). And the Court judges the degree of the state’s “independent judgment and control” by measuring precisely the variable that the court below said was irrelevant: the Court requires evidence of “[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law . . . .” Ticor, 504 U.S. at 633. Critically, the Court added that:

state officials [must] have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy. Absent such a program of supervision, there is no realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.

504 U.S. at 634 (quoting Patrick v. Burget, 486 U.S. 94, 100-01 (1988)).

Therefore, the result in this case should not stand unless there is some difference between the filed rate doctrine, applied below, and the state action doctrine explained in Ticor, and the difference serves some relevant policy goal important enough to justify radically different exposure to liability in otherwise similar contexts. But the only difference in consequence between the two doctrines is that the state action immunity precludes all antitrust and the filed rate rule ordinarily precludes only some private remedies. No policy goal of either antitrust or federalism is served by precluding private federal remedies in only one of two markets identical except that one observes a pro forma state-law filing requirement.

First, the policy values on which Keogh and other filed rate cases are justified have no force where rates are filed with a state agency.8 The goal of preventing price discrimination among customers—the filed rate doctrine’s “paramount purpose,” Square D Co. v. Niagara Frontier Tariff Bur., 476 U.S. 409, 417 (1986) (quoting Keogh, 260 U.S. at 163)—has no relevance here. First of all, as petitioners observe, Delaware’s regulatory regime explicitly permits varying prices and contemplates that they may be set competitively. Compl. ¶ 34 (quoting Del. Code Ann., Tit. 18, § 2501). But even if Delaware did prohibit discrimination, a state non-discrimination rule should be no basis for disregard of federal antitrust laws. A mere state government desire to prevent price discrimination—which is an ordinary feature of many healthy, competitive markets— should receive no more federal deference than any other state intrusion into normal competition. It would be no different than when a state “simply authorizes price setting and enforces the prices established by private parties.” 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344-45 (1987) (quoting Midcal, 445 U.S. at 106). Especially where the state engages in no actual oversight of the rates set, it would do no more than “cast[ ] . . . a gauzy cloak of state involvement over what is essentially a price-fixing arrangement.” Id.

Likewise, mandating deference to regulatory authority, the other major policy goal commonly associated with filed rate protection, would make little sense here, for that is precisely the value precluded by Ticor. A state government cannot by mere fiat declare that antitrust does not apply. No policy goal of antitrust or federalism would make that more true simply because a state has adopted a pro forma rate-filing requirement.

Second, it is no reply that filed rate protection leaves open federal enforcement. Ticor stressed the danger, in terms of the lost values of healthy competition, were states allowed to displace antitrust by fiat. See 504 U.S. at 632 (“The preservation of the free market and of a system of free enterprise without price fixing or cartels is essential to economic freedom. . . . A national policy of such a pervasive and fundamental character is an essential part of the economic and legal system within which the separate States administer their own laws for the protection and advancement of their people.”). It follows that if private remedies are needed for the actual preservation of those values, then private remedies too cannot be dispensed with by state fiat.

#### Filed rate has become a judicial bypass for enforcement.

Rossi ’3 [Jim Rossi; 2003; Law Professor at Florida State University; Vanderbilt Law School, “Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era,” vol. 56]

B. Antitrust Defenses and Immunities

Modern antitrust defenses and immunities provide courts an opportunity to safeguard the public interest in deterrence - largely ignored by the filed tariff shield - in the context of federal antitrust litigation. To be sure, per se defenses provide an important set of protections against judicial overreaching on the basis of antitrust law into competitive markets. 236 However, allowing the filed tariff doctrine to become an independent, firm-specific antitrust defense - as courts have - is unnecessary and harmful, given other doctrines that protect agency discretion and state jurisdiction while also providing courts the flexibility to evaluate dual enforcement issues. Courts should independently assess whether tariffs qualify for immunity from antitrust enforcement, using traditional antitrust law doctrines, rather than using filed tariffs as a shorthand way of bypassing the antitrust laws. In contexts in which in the filed rate bar has been raised, antitrust defenses arise in two distinct scenarios: 1) horizontally, in instances where federal regulators, rather than federal courts, might assert jurisdiction over allegedly anticompetitive conduct; and 2) vertically, in instances where federal regulators approve one tariff and state regulators approve another tariff, and hence a jurisdictional conflict arises because the allegedly [\*1647] anticompetitive conduct is arguably within the realm of state regulators or falls into a jurisdictional gap. In both scenarios, antitrust law already provides ways to respect the agency regulatory process, making the filed tariff doctrine redundant.

1. Horizontal Jurisdictional Conflicts: Regulatory Compliance and Primary Jurisdiction

In the horizontal scenario, courts since Keogh have invoked the filed tariff shield to bar most antitrust claims, but do recognize certain exceptions. 237 Nearly twenty years ago, Judge Friendly called the doctrine into question in this context. 238 Although in Square D the Supreme Court refused Judge Friendly's invitation to overturn Keogh, Justice Stevens and a majority of the Court were notably sympathetic to his critique. 239 Given the more prevalent emergence of market norms, Judge Friendly's critiques resound even more clearly today. Although recent Ninth Circuit cases refuse to allow deregulation to threaten the application of the filed tariff doctrine, these cases are solidly preemption cases rather than cases applying the basic principles of Keogh. 240 Federal courts have yet to fully assess Keogh's fate against the backdrop of electric power and telecommunications deregulation.

Where federal regulators have approved all tariffs related to allegedly anticompetitive conduct, the continued rationale for allowing the filed rate doctrine to bar antitrust liability is questionable. The strongest rationale for invoking the filed rate doctrine in this context is out of respect for the expertise of agency regulators, reflected in the deference strand of the filed tariff doctrine. In Town of Norwood, the First Circuit characterized the legal foundations of the filed rate doctrine as "extremely creaky," 241 but when invoked as a bar to antitrust enforcement, the filed rate doctrine is also incoherent. To begin, as with state contract and tort law claims, if misconduct requires modification of tariff terms, regulators could easily accommodate this need in future rate cases. 242 But also, as the court [\*1648] itself noted in Norwood, in the context of the tariff approval action, FERC had waived requirements that filed rates or tariffs be accompanied and justified by cost-of-service data. 243 Such data would be necessary for the agency itself to evaluate the price squeeze claim.

Notwithstanding the fact that the agency lacked sufficient data to evaluate a claim of price squeeze, the court in Norwood concluded that "it is the filing of the tariffs, and not any affirmative approval or scrutiny by the agency, that triggers the filed rate doctrine." 244 This is dangerously broad language. By focusing on the filing of tariffs by regulated firms, the court privileges private behavior rather than the actual or anticipated actions by regulators that traditional deference concepts evaluate. It is difficult to reconcile invocation of the filed rate doctrine in the context of price squeeze claims - as the court struggled with in Norwood - with other antitrust claims, in which the filed rate doctrine has not been successfully invoked as a bar to litigation. For example, mergers and sales of assets by utilities have been subject to antitrust challenge even though the resulting rates were subject to federal regulation and the merger or sale had been approved by regulators. 245 Since Otter Tail, which allowed antitrust claims when an agency had some jurisdiction, the simple filing of tariffs has not precluded antitrust claims, even where regulators have partial jurisdiction over conduct. 246 In a deregulated market, courts have a particular responsibility to carefully assess tariffs in order to help ensure that anticompetitive and otherwise illegal private conduct does not "escape scrutiny" of applicable legal standards. 247 Otherwise, as Judge Boudin (who penned Town of Norwood) warned in an earlier-published article, through the repeated use of the filed tariff doctrine the "metaphor is likely to exhaust itself," 248 undermining the very competitive process it is designed to protect.

#### Causes jurisdiction hunting. State action immunity makes it coherent.

Rossi ’3 [Jim Rossi; 2003; Law Professor at Florida State University; Vanderbilt Law School, “Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era,” vol. 56]

2. Vertical Jurisdictional Conflicts: State Action Immunity

Modern antitrust jurisprudence also potentially extends the filed tariff doctrine's reach to a second context, vertical, in which both federal and state regulators have approved tariffs relating to allegedly anticompetitive conduct. In this context, it is conceivably the state-approved tariff that makes antitrust enforcement unnecessary. Some states do not explicitly endorse the filed tariff doctrine, as a matter of state law, 261 but, regardless of whether a state independently does so, state action immunity serves functions similar to those the filed tariff doctrine purports to serve, again making it unnecessary.

State action immunity is designed to accommodate the federal antitrust interest in promoting competition with state interests in regulation. When state regulation works to restrict competition, these two interests may collide. In Parker v. Brown, the United States Supreme Court addressed this conflict in reviewing the potential antitrust liability of state officials enforcing a program that fixed raisin prices and restricted competition between growers. 262 The Court held that the Sherman Act was not intended to restrain "state action," effectively creating absolute immunity for pure state actors, but the Court did not address the potential liability of private parties operating under the auspices of state law. 263

Later cases extended state action immunity to private parties whose allegedly anticompetitive acts were the product of, or approved by, state action. As the Supreme Court stated in California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., immunity for private actors exists only if the challenged restraint is taken pursuant to a ""clearly articulated and affirmatively expressed … state policy'" 264 and is subject to active state [\*1653] supervision. 265 The clear articulation requirement does not require a defendant to show that state law compelled the challenged actions, 266 but instead only that the state affirmatively contemplated the type of activity challenged. 267 Given this low threshold, the active supervision requirement does most, if not all, of the heavy lifting in determining whether state action immunity applies to private actors. 268 Courts have held that this requirement is not automatically met when the state "simply authorizes price setting and enforces the prices established by private parties" because such a broad authorization would merely "cast[] … a gauzy cloak of state involvement over what is essentially a price-fixing arrangement." 269

In the context of dual rate regulation schemes, state action immunity can have the same effect as the filed rate doctrine at the state level, while also providing courts flexibility to evaluate the deterrence implications of declining jurisdiction. In Town of Concord v. Boston Edison Co., then-Judge Breyer assessed a price squeeze claim brought under these circumstances. 270 FERC regulated Boston Edison's wholesale electric power rates, while its retail rates were regulated by state authorities. 271 Municipal utilities, such as the Town of Concord, challenged Boston Edison's wholesale prices as anticompetitive, on the grounds that the utility's wholesale price increases, approved by FERC, had not been matched by corresponding retail price increases at the state level. 272 The municipality claimed that the disparity between the two rates put the towns in a price squeeze, making retail customers more likely to purchase directly from Boston Edison and thus placing the municipal customer base at risk. 273 Properly declining to apply the filed rate shield - because this basis for refusing jurisdiction is particularly problematic in the context of price squeeze claims, where sometimes neither the federal [\*1654] nor state regulator has authority to rectify an antitrust violation 274 - Judge Breyer reasoned that Boston Edison enjoyed no express immunity from the application of the antitrust laws, but recognized that careful analysis of the price squeeze claim is necessary in the context of regulated industries. 275 Regulators continue to monitor the reasonableness of rates, as well as the relationship between utilities and their competitors. 276 In addition, Judge Breyer noted that regulation makes it less likely that a price squeeze would drive independent distributors from the marketplace, since the permission of regulators is required to take on new customers. 277 He further observed that supporting a price squeeze claim in such circumstances is at odds with the goals of price competition to the extent that it would encourage greater retail rates, and that there were potential institutional concerns with courts telling regulators what rate to apply under the circumstances. 278 Judge Breyer concluded that "a price squeeze in a fully regulated industry such as electricity will not normally constitute "exclusionary conduct' under [the] Sherman Act … ." 279

Judge Breyer's analysis addressed the price squeeze claim on its merits. This is understandable given that, in the context of this specific price squeeze claim, it was unclear whether the anticompetitive conduct was the wholesale rate, the retail rate, or both. 280 However, on similar facts - where the state regulates retail rates and the allegedly anticompetitive conduct is at the retail level [\*1655] only - state action immunity might allow a more complete analysis of the deterrence benefits of allowing an antitrust claim to go forward. 281 If a state actively supervises the regulation of retail rates, for example, this could implicate state action immunity in price squeeze and other antitrust claims. 282 Thus, if courts are satisfied with the monitoring provided by state regulators (including their ability to deter wrongdoing by regulated firms), there may be no need to address the merits of antitrust claims, creating the same effect as the filed tariff shield - even in instances where a state lacks its own state-law version of the doctrine.

Such an approach has significant advantages over the filed rate doctrine, as it focuses on the degree and effectiveness of overlapping state supervision, rather than on the simple act of filing or approving a tariff. Courts have yet to fully determine how state action immunity will apply in a full or partially deregulated environment. It is fair to predict, though, that as market norms emerge in formerly regulated industries, state action immunity will likely be available less often than was previously the case. 283 For example, in a recent case involving a utility's offer of a discounted rate to a customer that was conditioned on the customer's agreement to forego development of its own generation plant, a United States District Court agreed with the Department of Justice's Antitrust Division that such conduct was not protected from antitrust attack by state action immunity. 284 Although the New York state legislature had authorized reduced rates to "prevent loss of … customers," and the New York Public Service Commission had approved the reduced rate contract, the court held that the state legislature did not foresee or intend the anticompetitive [\*1656] features of this arrangement, particularly to the extent it resulted in the removal of a competitor. 285

None of these doctrines - robust federal preemption, primary jurisdiction, or state action immunity from antitrust enforcement - was available early in the twentieth century, when federal courts first developed the filed tariff doctrine to help protect customers against discrimination in rates. 286 The filed tariff doctrine was questionable even before these doctrines developed, but today it is even more unnecessary. Further, by encouraging perverse behavior by private actors that is largely beyond the reach of the judiciary - thus widening the jurisdictional gap in enforcement of market norms - the doctrine is harmful. Using the filed tariff doctrine as an independent legal reason to preempt state law claims, or refuse jurisdiction over antitrust and other federal claims, gives short shrift to the public interest in the context of dual regulatory enforcement. In a dual enforcement regime, the jurisdictional inquiry must focus on the relationship between the agency and the courts, or the agency and state law, rather than on the deceptively simple act of filing a tariff with a regulatory body. These alternative doctrines provide federal courts the flexibility necessary to do this. Similarly, in states that recognize the doctrine, an analysis of primary jurisdiction would suffice to protect agency discretion.

#### Chills telemedicine which would solve the aging crisis.

Sklar ’20 [Tara and Christopher Robertson; 2020; Health Law Professor at the University of Arizona; Law Professor at the University of Arizona; American Journal of Law and Medicine, “Telehealth for an Aging Population: How Can Law Influence Adoption Among Providers, Payors, and Patients?” vol. 47]

Notwithstanding these avenues of reform, many states continue to restrict healthcare providers from practicing telemedicine by requiring a full license in the state of service.102 These states often define “the practice of medicine broadly to include phone calls, e-mails, and on-line discussions, circumscribe[ing] the use of the new technology.”103 To the extent that these state licensing laws are designed to favor local providers, they may arguably be subject to challenge under the dormant commerce clause of the U.S. Constitution,104 or under federal antitrust laws.105 Regardless, Congress should consider affirmatively preempting them as hindrances to interstate commerce and federal spending, such as Medicare. Likewise, Congress preempted state doctrines around corporate practice of medicine, to the extent that they interfere with the work of Health Maintenance Organizations (“HMOs”).106

Similar to when and how a healthcare relationship should be established, states may claim that strict licensure laws improve standardization and quality of care,107 but if the benefit is slim, then it may not offset the chilling effect of the on cross-border practice, and hence, provider participation and patient access. In fact, state licensure laws do not vary substantially, and a more ambitious alignment seems to be a promising path forward.108

C. REIMBURSEMENT OF COSTS

\*322 In this section, we describe current approaches by insurers, including Medicare, Medicaid, and private carriers, to reimburse for telehealth services. We discuss related state laws, and suggest how to optimize reimbursement for greater telehealth adoption.

On the private payor front, 40 states and the District of Columbia have laws governing reimbursement for telehealth.109 These laws either require coverage parity, which ensures that a service is reimbursed if provided through telehealth, or payment parity, which ensures that reimbursement is at the same rate as when care is delivered in-person.110 If the policy goal is to increase use of telehealth, then payment parity can reassure doctors that telehealth will not undercut their revenues. However, payment parity laws can defeat the policy advantage of telehealth to reduce costs.111

Because the majority of states have private-payer reimbursement laws of some sort, the current practice is to amend a law to expand its applicability to additional specialties.Minnesota, for example, did this when it expanded its private-payer law to cover dental coverage, while Utah's expansion singles out telepsychiatry services,112 and Washington allows telemedicine to be offered from “any location determined by the individual receiving the service.”113 It is important to question whether these private-payer laws are necessary to expand reimbursement efforts given increasing market demand. A Milbank report documented interviews in six states that did not have parity in payment laws, yet found that almost all private health insurers covered telehealth services and paid the same rate as in-person services.114

The aforementioned expansion of MA plans to cover telehealth could be an excellent natural experiment to compare before and after 2020. The clear implementation date could determine whether and how much reimbursement changes are improving overall utilization, access to care, better health outcomes, and lower costs when compared to the traditional Medicare population, in essence the control group. Comparisons between states may also be striking as most MA enrollees, forty percent, reside in six states (Florida, Hawaii, Minnesota, Oregon, Pennsylvania, and Wisconsin) and Puerto Rico, and, by contrast, rural states have lower rates of MA enrollees.115

MA's expansion into the telehealth may create additional market pressure for private insurers (who often also administer MA plans) to voluntarily reimburse for telehealth services. Traditional Medicare may follow the pathway that MA is starting with a bipartisan bill that was reintroduced on October 30, 2019 entitled Creating Opportunities Now for Necessary and Effective Care Technologies “CONNECT” for Health Act, which is currently pending in the Senate Finance Committee.116 This bill would reduce geographic and site-specific requirements for traditional Medicare so \*323 that these beneficiaries would also receive telehealth delivered care directly in their homes.117 This pending legislation could make an enormous impact on telehealth utilization nationwide where the pool of patients would surge to nearly 60 million people.

The MA move may also influence Medicaid, especially as the largest payor for long-term care in America. There are over six million older adults on Medicaid who have both Medicare and Medicaid coverage (aka “dual-eligibility”), and this is largely attributable to them going through their savings paying for some form of long-term care.118 In an effort to extend personal finances, a phenomenon of “aging in place” is gaining primacy as the preferred long-term care model, rather than a nursing home or institutional setting.119

Telehealth coverage and reimbursement in state Medicaid programs vary considerably. Almost all states (49) and the District of Columbia have some coverage for telehealth, and nearly all reimburse for live video telehealth.120 Some state Medicaid programs impose restrictions such as limits on the sort of facilities where telehealth care can be received, by what type of healthcare provider, and geographic restrictions.121 As of 2016, eight state Medicaid programs reimbursed for telehealth under their home health services, but this number more than doubled to 19 states by 2019.122 Patients are eligible for these Medicaid services if they have two or more chronic conditions, one chronic condition and are at risk for a second, or have one serious and persistent mental health condition.123 Given the prevalence for chronic conditions and mental health among older adults, as previously discussed, many will be able to meet the eligibility requirement.124

States are removing some of these restrictions, for instance, the majority of state Medicaid programs no longer have rural requirements that must be met for telehealth reimbursement.125 Additionally, a number of states are demonstrating innovative efforts with funding support from the federal government, namely through grants and waivers for home health programs.126 With the consent of the U.S. Department of Health and Human Services, Alabama, Iowa, Maine, New York, Ohio, and West Virginia have all used state plan amendments that include telehealth coverage in their home health proposals.127 Similarly, Kansas, Pennsylvania, and South Carolina have used waivers to cover remote patient monitoring for long-term care services.128

Across all these domains of insurance, the quick expansion of telehealth coverage may be worrisome if it forces patients who would otherwise prefer an in-person visit to only have access to care via telehealth. One option to help curtail this \*324 issue is for insurance regulators to require that insurers maintain an in-person option for members. Nonetheless, such insurance mandates may wreak inefficiency, if they do not reflect consumer preferences.

CONCLUSION

Telehealth is increasingly important to the future practice of medicine, but poses a unique set of challenges for state lawmakers as they attempt to navigate interstate practice. Additionally, state and federal lawmakers are being confronted with how to provide high-quality, affordable care for an aging population that will live for an average of two decades with multiple chronic conditions.129

It is clear that law plays a substantial role in how quickly telehealth operators can achieve the scale necessary to provide care for an older population in their homes. Fortunately, state licensure laws are actively reducing some of the administrative burdens that had limited cross-border practice with support for an interstate compact.130 But much more can be done on this front; the fragmentation of state-based licensure likely does not promote quality or efficiency compared to a unified or seamless system. Furthermore, the CMS rule to allow MA plans to reimburse for care received in the home is an essential move for telehealth to suddenly reach a much broader and older population where utilization has been disproportionately low compared to other age groups.131 This federal-private insurer effort combined with the work already underway via state Medicaid programs should continue nationwide growth for telehealth adoption.

An area that continues to remain variable across states is the establishment of a healthcare relationship. The position of the AMA and the states that follow it reflect a presumption that in-person interactions should remain the baseline for healthcare standards. Also discussed, to require an in-person visit for patients who cannot leave their homes without substantial difficulty, and for conditions where the standard of care would not require a physical exam, seems unnecessarily onerous and costly for all parties. A more flexible, forward-looking approach would be for lawmakers to allow alternatives or exceptions that recognize telehealth's unique capabilities and the patients that would most benefit from this form of care.

#### The aging crisis causes extinction.

Vladev ’20 [Ivaylo and Rositsa Vladeva; July 1; Konstantin Preslavsky University of Shumen, Faculty of Natural Sciences; Sciendo, “The Demographic Problem – One of the Main Problems of Contemporary,” vol. 7, no. 2]

The aim of the present study is to analyze the essential features of the global problems of the contemporary stage in the development of human society and to highlight the place of the demographic problem as an objective factor for the existence of modern civilization.

To realize the goal it clarifies the criteria for determining a problem as a global one and makes classification of the global problems from a geographic point of view. It identifies the causes for the demographic problem, analyses and specifies its different dimensions at the global, regional and national levels.

Materials and Methods

In order to study the processes of globalization and the specific features of the demographic problem, comparative analysis, content analysis and quantitative methods are applied. In order to clarify the criteria for determining a given problem as a global one, methods of systematization and classification from a geographic point of view are applied.

Results and Discussion

One of the essential characteristics of the modern development of the society is its globalization. It is known as international integration on a large scale in all areas of economics, culture and society. The processes of globalization should be explored in the context of the relationship of the planetary problems with some aspects of economic and social life on a global, regional and national level [2].

Globalization is a complex process that provokes many controversies, but also determines the overarching changes in our times. According to U. Bek, „globalization is certainly the most commonly used - the wrongly used - and the most rarely defined, probably the most vague, the most fuzzy and the most politically influential word in the last but also in the coming years“ [1, p. 42]. Most researchers regard globalization as an inevitable process of forming common principles of current civilization development and common criteria for the qualitative assessment of the development.

We can therefore accept globalization as a complex integrative process, characterized by the following main features:

- universality - a tendency towards integration of all economic, social, political, cultural, environmental and demographic processes in their entirety and interdependence;

- democracy - engaging and actively participating in the process of globalization of all social strata;

- spontaneity - absence of an external source as a special moderator;

- chaoticity - inconsistency of the ongoing integration processes and presence of random fluctuations.

Globalization is a phenomenon, but it is not an ideal process as well as its results and it affects differently individuals, social communities, countries, regions, and the planet as a whole. It has its positive and negative consequences, encompassing socio-economic, demographic, natural-geographic processes, transforming human relationships into a state of globality.

Globality as a problem is also associated with the global problems of civilization. During its development the human society frequently encounters complex problems originating from its local nature and cover significant parts of the globe. According to P. Lakov, „the global problems are provoked by the chronological unity and the rapid rate of destruction of the balance between nature and society and should therefore be considered as an undivided system of dynamically changing interdependent phenomena in the space“ [3, p. 24].

The global problems of the contemporary stage of the development of the world civilization are already fully manifested in the second half of the 20th century, but from the end of the 1990s to the present day as a result of the introduction of the new information and communication technologies and the enhanced processes of economic and political integration a kind of „globalization boom“is observed. Therefore, the studying of the global problems is necessary to take into account both the general patterns and trends in the development of the world economy, as well as the action of the social factors of development, including the rapid growth of the population of the planet, the strengthening of interaction and interdependence between states.

According to their origin, the global problems are the result of the processes of globalization that are taking place in today's world and play the role of drivers for the development of the world system. Because they arise from the functioning of the global systems and their interaction, they can not be considered in isolation, but their unity and interrelation must be taken into account.

The global problems are wide ranging and continually create hazards for the existence and development of human society. The world of the 21st century inherited from the 20th century poverty, economic problems, resource shortages, mass diseases and nationalism and religious fanaticism, dozens of „hot spots“ and international terrorism. The old dangers in the form of weapons of mass destruction are complemented by new ones.

Though diverse in nature, the global problems have a common specificity that separates them from the other processes and phenomena in world development and they are distinguished by certain features:

- they endanger the future of all human civilization;

- they are an objective factor for the world development;

- targeted and coordinated actions of much of humanity are needed to overcome them;

- failure to resolve them can lead to serious and irreversible consequences for the whole of humanity. Some authors believe that the global problems are the result of the following inconsistencies:

- between the unlimited production factors entering the system „technically“ and the limited reproduction capabilities of the system of nature;

- between the „industrial“ system widely used in the technics and the other „small craft“ and „,partly craft“ system under the name „human“;

- between the unique products of the „classical culture“ and the unrestricted circulation of „mass culture“ products;

- between the global balances according to which the stability of processes in nature and society depends on the degree of their balance [4, p. 280-281].

The territorial character of the global problems could be pointed out as their specific feature. Geographically they cover the whole of the world, but at the same time they are manifested at the regional level as well, with local indications in different countries. This proves the relationship between the categories: „common“(global) – „special“(regional) – „individual“(local).

In order not to identify the public, regional and local problems with global ones, it is necessary to specify criteria that can define a given problem as a global one (Figure 1).

[FIGURE 1 OMITTED]

It should be noted that these criteria together can only establish the global nature of a given problem, because each of them can not be a decisive factor. At the same time, we must emphasize the high dynamism of every global problem caused by the combination of many different factors and their state in specific historical conditions and geographic regions.

There is a wide variety of views regarding the classification of global problems: depending on their severity, the time of their emergence, their nature, the actual real dependencies between them, the sequence of decision-making to overcome them, etc. Their grouping according to certain attributes helps to identify the existing links, to specify the priorities, to determine the degree of exacerbation of objectively existing global problems and to rank the sequence of the actions for their solution.

In order to realize the purpose of the study and to clarify the essence of the global problems, an attempt was made to create a geographical classification. Without claiming to be exhaustive, we formulate fourteen global problems on the basis of their relevance, severity and importance. They are grouped into three large groups depending on the spheres in which they appear and prove the trinity of nature – man – society. Accordingly, the groups are geodemographic, population-related; natural-geographic, arising from the components of the natural environment and socio-economic, related to the economy, the social sphere, the culture, the social development (Figure 2).

Based on the classification, the following conclusions can be made:

- Global problems increase their number and sphere of manifestation;

- The greatest number of global problems (1/2 of all classified) occurs in the contact areas of interaction;

- Regardless of the conditional and relative nature of the proposed classification, the occurrence of the global problems is in close interdependence and interrelation;

- Most of the global problems has a complex nature because they occur under the influence of two (3, 4, 6, 8) or three main groups (2, 5, 7);

- Due to their complex nature the global problems require a system of comprehensive measures to resolve them.

From these examples it can be summarized that the assignment of one or another problem to a given group is conditional and depends on the criteria of partitioning, the degree of relevance of the individual problems and the regional view of the authors on them. Therefore, the proposed classification should be seen not as a definitive solution to the issue but as a possible way of reconstructing the complex system, helping to better understand the essence of the interrelations between the global problems.

[FIGURE 2 OMITTED]

1. Demographic

2. Food-related

3. Healthcare problems

4. Educational problems

5. Preservation of world peace

6. Problems of international security

7. Ecological

8. Depletion of natural resources

9. Global warming

10. Water-related

11. Global catastrophes and natural disasters

12. Socio-economic conflict between poor and rich countries

13. Social inequality

14. Spiritual and moral crisis of humanity

Every global problem should be seen from three main points: what is the present situation, where, how and why the situation has become dangerous and how we can try to change it for the better by applying different strategies. The choice and the decision depend to a great extent on the social-ethical and moralhumanistic norms created in society, which is also the goal of its development [5, p. 12].

It is known that the problem is a scientific or public issue that has to be investigated and solved. It is caused by a certain inconsistency in the course of a natural, social or demographic process, the carrying out of some human activity and the lack of the expected result.

The demographic problem is a leading among the global problems of our time, because its emergence and solving influence the solution of food problems, the environmental problem, the preservation of the world peace, the problems of the international security, the health care and the education.

Demographic problems arise in the reproduction of the population and the level of compliance of resources for the development of humanity and of individual peoples and societies. The main criterion for assessing the course of demographic processes is the ability to carry out normal and appropriate reproduction of the population according to the conditions and resources. Demographic development is not limited only to the process of increasing the number of inhabitants of the planet, but also includes the problems of increasing population in relation to the natural resource potential of the territory, the condition and quality of the environment, hindering the food supply of the population, urbanization, inter-ethnic relations, refugees, lack of employment. All this proves that the interrelations between demography, economy and politics are complex and multilayered.

Therefore, the demographic problem is the mismatch between the level of socio-economic development, the resource availability for the economy, food and commodity production and population growth. Generally speaking, the demographic problem is that the population is rapidly growing due to the high fertility rate and life expectancy, the shortage of natural resources and production capacities for food and consumer goods.

Today, the effects of relative and absolute population growth become so topical that they are becoming a global problem. The dynamics of population growth in the world, presented in Table 1, is very distinctive.

The point of 1 billion is exceeded at the beginning of the 19 century. While the first doubling after 1810 required 110 years, the second one was in 40 years (1920 – 1960), the third one in 14 years (1960 – 1974) and the last one in 12 years (1999 – 2011). For the last 18 years, the population has increased by more than 1.5 billion and 94.5% of the growth is in the developing countries and only 5.5% of the developed ones. At the end of 2017, the world population reached 7.5 billion.

[TABLE 1 OMITTED]

The rate of population growth is the rate at which demographic indicators change. The highest rates of population growth in the world occurred in the 1970s and 1980s – about 2% average annual growths. Then they began to decline and in the first decades of the 21st century they were set at 1.2%. It is expected that in the middle of the 21st century they will increase again to 2.8%.

According to estimates of UN experts, the world population by 2025 will reach 8.2 billion, by 2040 – 9.2 billion, by 2050 – 9.7 billion and by 2055 – almost 10 billion. Population growth, according to the expected trends for this period, will be formed by developing countries in a ratio of 97: 3.

Much or little is the present world population of 7.5 billion people? The world population itself, however significant, can not be considered as large or little, isolated from the natural and human resources and the established political and socio-economic conditions.

Scientists maintain two different opinions and carry on intensive discussions. Some of them believe that the Earth is still far from absolute overpopulation and unlikely to reach it. Another part of them believe that the Earth is already overpopulated. Reason for this opinion is the misery, malnutrition and hunger, avalanche escalation of environmental problems in overpopulated areas.

Very often, population growth is seen as one of the factors not only hindering the fulfilment of life needs, but also threatening the viability of human civilization. Together with the increased consumption of natural resources, technical and energy equipment, the amount of waste resulting from human life and production activity is constantly increasing. Moreover, the socio-demographic situation in developed and developing countries is diametrically opposed, denoted by the term „demographic division of the world“.

In different countries and regions, the demographic problem has different dimensions. In developed countries, the demographic problem is mainly reflected in the aging of the population and the reduction of human resources for the economic development of the countries. In developing countries, the demographic problem is reflected in a predominant increase of the population to the basic necessities of life and the occurrence of significant difficulties in feeding the population, its health care and the development of education. The extent and the nature of the demographic problem in individual countries depend to a large extent on their socio-economic development and the stage of the demographic transition they are on. At a regional and national level, demographic problems, depending on the type of reproduction of the population, have different dimensions – demographic explosion, demographic stagnation and demographic crisis. Human development across individual regions and countries is assessed through the two problems – a demographic explosion and a demographic crisis.

The rapid increase in population in the world, in a particular geographic region or in a particular country is defined as a demographic explosion. It is characterized by a high birth rate, a sharp drop in mortality, and especially child mortality and increased life expectancy. This is an unfavourable demographic situation because it reduces the opportunities for most people to feed, the opportunities for health care, education, jobs, etc.

The accelerated growth of the world population is now predominantly determined by the developing countries. Due to the high relative share of the population at sub-working age (1/4 of the population up to 16 years old) these countries will preserve the high growth rate of their population. Demographic explosion has a restraining effect on the country and region's development prospects. It is characteristic for the most countries in Africa, some countries in Asia and Latin America. At present the epicentre of the demographic explosion is in Africa.

High birth rate is the main prerequisite for triggering the demographic explosion. It, under the conditions of decreasing mortality, ensures the large population growth. The most significant birth rates occur in the continent of Africa and mostly in the West, Central, East and partially in South Africa.

In 2017, 43 African countries had birth rates above 30‰. The highest figures are in Niger (50‰), Chad (48‰), Angola (46‰), Democratic Republic of Congo (46‰), Central African Republic (45‰), Mozambique (45‰), Mali (44‰), Somalia (44‰), Burkina Faso (44‰), Burundi (43‰), Zambia (43‰) and others. The countries in Asia are with high birth rates too. 5 of them have a birth rate above 30‰: the Democratic Republic of Timor – Leste (36‰), Afghanistan (34‰), Yemen (33‰), Tajikistan (33‰), Iraq (31‰); and in 34 of them the birth rate is between 20 and 30‰. Haiti, Bolivia, Guyana and Guatemala in Latin America have a birth rate of between 25 and 30‰.

The decreasing overall mortality is the second most important prerequisite for the demographic explosion. It is mainly due to the development of healthcare and medicine and to the raising living standards of the population. Under this influence is the mortality rate in most European countries, East Asia, North America, the Gulf region (Oman, UAE, Qatar, Bahrain, Kuwait, Saudi Arabia). Decreasing mortality rate in these countries leads to an increased average life expectancy and aging of the population. The lower mortality rate in a number of countries is due to the age structure of the population with a strong predominance of younger generations (25-30% of the population up to 16 years old) and is denoted by the term „demographic spring“. This applies to most African countries.

The mortality rate is in close relation with the average life expectancy. The latter grows almost continuously. This is due to the increased living standards, the way of life and the improvement of health care.

According to UN data in 2017, the expected average life expectancy in the world is 69 years, for men 67 years and for women 71 years [6]. The highest average life expectancy is in the developed countries: Monaco (89.4 years), Japan (85.5 years), Singapore (85.5 years), Iceland (83.1 years), Israel (82.7), Switzerland (82.7), Malta (82.7 years), the Republic of Korea (82.5 years), the Australian Union (82.4 years), Italy (82.4 years), Luxembourg (82.4 years) and others.

Geographical regions with the highest average life expectancy are Western Europe and North America. For men, life expectancy is the highest in Monaco (85.5 years), Singapore (82.8 years), Japan (82.2 years) and Iceland (80.9 years). Women have the highest life expectancy in Monaco (93.4 years), Japan (89 years), Singapore (88.3 years) and Republic of Korea (85.8 years). The lowest life expectancy is in the poor African and Asian developing countries, such as Mozambique (54.1 years), the Central African Republic (53.3 years), Somalia (53.2 years), Zambia (53 years), Lesotho (53 years) and Afghanistan (52.1 years). Decreasing child mortality in developing countries and the high birth rates have an impact on the population growth and hence on the demographic explosion. At the end of the 20th century, child mortality in the world was about 54‰ and in 2017 it declined to 32.9‰. Thus, while in 2000 the continent with the highest child mortality rate in the world, Africa, it ranged from 87‰ (West Africa) to 140‰ (Central and Eastern Africa), in 2017 there was no African country with child mortality over 100‰.

Today, it varies in a wide range from 20 to 93‰ and decreases as a result of measures to combat diseases, hunger and malnutrition and to improve healthcare. Over the last decades, the child mortality rates in Arab countries rapidly decrease, especially in the Persian Gulf region (below 8‰), where it has reached the level of the most developed countries.

Analyzing the demographic situation in the world in the context of the demographic explosion, we should note that the larger population has a stronger impact on the environment and increases the „demographic burden“ on the territory.

It is simultaneously influenced by several factors: the absolute population growth, the extent of consumption (lifestyle, income, and infrastructure development), the social inequality of the population, and the level of technology used. The development of the modern economy requires the use of an increasing amount of natural resources. The acuteness of the problem is related not only to the depletion of the limited resources, but also with the nature of their impact on the environment during use. The increase of the population in the world and its migration intensify this impact by preventing the stabilization of the unemployment problem; make it difficult to solve the problems of education, healthcare and social welfare. Consequently, any socio-economic problem includes a demographic problem as well.

Decreasing the population in a particular geographic region or country forms the situation of a demographic crisis. It is due to low birth rates, average mortality rates, aging of the population, negative or zero natural growth and shortage of labour resources.

As a global problem it is still considered the demographic explosion, not paying due attention to the upcoming demographic problems as depopulation, narrowed reproduction of the population and its aging, which will cause irreversible negative social and economical problems and demographic crises, especially among the small nations.

The aging of the population forms an unfavourable demographic situation, consisting in increasing the number and relative share of people in over-working age, reducing the number of people in sub-working age and limiting the labour resources. It is especially distinctive for most countries in Europe, Japan and others.

The aging of the population is characterized by the average age of the population (a characteristic of the age structure of the population, which is calculated as a weighted average value of the population in all age groups). It reveals the level reached in the process of population aging in the world and countries.

In 2017, the average age of the population in the world is 30.6 years. It ranges from a low age of 15.5 to 16 years in the African countries of Niger, Mali, Chad, Uganda and Angola up to 43 years or more in some European countries and Japan. The countries with high living standards and high life expectancy have the highest average age like Monaco (53.8 years), Japan (47.7 years), Germany (47.4 years) and Italy (45.8 years). The high average age is a feature of countries with a very high level of emigration of young people, such as Slovenia (44.2 years), Lithuania (44), Latvia (43.9 years), Croatia (43.3 years), Bulgaria (43 years), Estonia (43 years) and others [6].

Thus, the relative share of the population in over-working age in 2025 in these countries will account for over 1/4 of the total population, which will cause significant losses for health care and social security. At the same time, the birth rate in most economically developed countries can no longer provide for simple reproduction of the population. This process is called „demographic winter“.

The phenomenon of the demographic crisis is primarily centred on the countries of Eastern Europe and is not yet typical for the developed countries. It becomes topical to the researchers of the population from the mid-1990s when the most unfavourable parameters of the demographic situation are reached – very low birth rates, high total mortality and high mortality in the individual age groups, old age structure, emigration, high unemployment, etc. About 80% of the natural population growth of the EU member states since 1994 is due to emigrants. According to demographic projections, almost all countries in Europe are expected to be covered by a demographic crisis in 2025.

The demographic crisis has its strongest manifestations in countries like Bulgaria, Latvia, Lithuania, Estonia, Hungary, Romania, Croatia and others. It is due to the negative natural growth and mass emigration of young population to Western Europe and North America. The term „demographic crisis“ can be interpreted as a profound violation of reproduction of the population. In 2017, Lithuania (14.8‰), Bulgaria (14.5‰) and Latvia (14.5‰) are at the top of the world's highest mortality rates, followed by Ukraine (14.3‰), Serbia (13.6‰), Belarus (13.2‰) and others. The lowest birth rates are in Japan (7.5‰), Puerto Rico (8‰), Portugal (8.2‰), Greece (8.3‰), Bulgaria (8.5‰) 5‰), Germany (8.6‰).

Since the beginning of the 21st century, the continent of Europe has a negative natural growth, with the highest negative figures being in Bulgaria (-6‰), Lithuania (-5‰), Latvia (-4.9‰), Serbia (-4, 7‰), Ukraine (-4.2‰), Hungary (-3.9‰), Croatia (-3.6‰). Thus, due to the low birth rates and high mortality, there is a disruption of the normal reproduction of human generations. The demographic crisis naturally reduces the population of a given country or region to a different extent, with a severe disruption of the basic demographic structures.

The demographic crisis is characterized by the fact that the real growth (the total value of the natural and mechanical growth) of the population in these countries is negative and forms a reduction of the population. In 2017, the reduction of the population is most pronounced in Lithuania (-11.1‰), Latvia (- 11‰), Moldova (-10.8‰), Bulgaria (-6.3‰), Estonia (-6‰), Croatia (-5.3‰), Serbia (-4.7‰), Ukraine (- 4.2‰), Romania (-3.5‰), Montenegro (-3.4‰), Hungary (-2.6‰), Belarus (-2.5‰) and others. The reduction of the population in each of these countries is not only related to higher mortality rates and lower birth rates but also to the significant emigration rates. The demographic crisis exists in Puerto Rico (-16‰) and Lebanon (-11.3‰) and the European countries Germany, Poland, Italy, Portugal, Greece are entering the crisis as well as Japan in Asia.

Many countries in the world are characterized by demographic stagnation. Its typical feature is maintaining the constant population. The actual growth is zero or around zero. This demographic situation is formed at and is characteristic for countries on different stages of demographic transition and different levels of socio-economic development. This group includes mainly developed countries with almost zero natural growth and a positive mechanical population growth, such as Austria, the Czech Republic, Slovakia, Slovenia, Finland, Spain and others.

The indicated negative trends in population development cover all developed and highly developed countries. The consequences for the society and the demographic systems in the developed countries are similar, but they vary in intensity over time. As the demographic crisis in these countries is largely blunted by immigration and increasing the average life expectancy.

Conclusions

Based on the report we can formulate the following results:

- The processes in the globalizing world are generating the global problems of today. They act as driving forces in the development of the world system.

- On the basis of their relevance and significance, in order to prove the trinity of nature – man – society, fourteen global problems are formulated in three large groups, depending on the spheres in which they manifest.

- Problems related to the dynamics of the human population affect the whole world and in some parts of the planet there is overpopulation, which can lead to depletion of natural resources as well as poverty and malnutrition.

- Global efforts to resolve the global demographic problem are contrary to the interest of countries that have unfavourable demographics including Bulgaria.

- There are countries with decreasing birth rates and increasing life expectancy everywhere in the world. The aging population leads to higher healthcare and pensions costs, and the number of workers and tax payers is steadily decreasing. As a result, these countries are at risk to become „demographic bombs“ which means a crisis due to too few people working.

- The demographic picture of the world is highly contrasting and moves between the two extremes - a demographic explosion and a demographic crisis. The factors that determine it affect the socio-economic development, income distribution, employment, unemployment, social security, health care, education, housing and the sources of water, food, energy, raw materials as well as environmental conditions and climate change.

- Stabilizing the population of our planet and resolving the demographic problem in the future is not an end in itself but a means of improving the lives of the present and future generations.

#### Antitrust executive action now.

Tankersly ’12-25 [Jim and Alan Rappeport; 2021; reporters; the New York Times, “As Prices Rise, Biden Turns to Antitrust Enforcers,” https://www.nytimes.com/2021/12/25/business/biden-inflation.html]

WASHINGTON — As rising inflation threatens his presidency, President Biden is turning to the federal government’s antitrust authorities to try to tame red-hot price increases that his administration believes are partly driven by a lack of corporate competition.

Mr. Biden has prodded the Agriculture Department to investigate large meatpackers that control a significant share of poultry and pork markets, accusing them of raising prices, underpaying farmers — and tripling their profit margins during the pandemic. As gas prices surged, he publicly encouraged the Federal Trade Commission to investigate accusations that large oil companies had artificially inflated prices, behavior that the administration says continued even after global oil prices began to fall in recent weeks.

The push has extended to little-known agencies, like the Federal Maritime Commission, which the president has urged to search for price gouging by large shipping companies at the heart of the supply chain.

The turn to antitrust levers stems from Mr. Biden’s belief that rising levels of corporate concentration in the U.S. economy have empowered a few large players in each industry to raise prices higher than a more competitive market would allow.

### Econ Adv – 2AC

#### Courts perma clogged.

Solomon '21 [Aron; 6/4/21; head of digital strategy for Esquire Digital and an adjunct professor of business management at the Desautels Faculty of Management at McGill University; "The Viral Court Backlog and How to Dig Out Post-Pandemic," https://www.law.com/thelegalintelligencer/2021/06/04/the-viral-court-backlog-and-how-to-dig-out-post-pandemic//]

Just over a year ago, if you would have asked an experienced judge or lawyer to imagine the litigation and jury trial backlog if a global pandemic were to sweep through the nation, they first would have probably told you that your morbid scenario wasn’t funny and that the courts would never be able to dig out.

This is precisely where we find ourselves today. Throughout state and federal courts, for both civil and criminal cases, we are in an infinitely worse position than we were when the pandemic began. The threshold issue today is how we dig ourselves out before the system implodes.

In New Jersey, the court system has a massive backlog that isn’t going to be cleared anytime soon. Michael J. Epstein, founder of New Jersey-based The Epstein Law Firm, has seen the dramatic effect the pandemic has had on the New Jersey court system.

“Earlier this year, the backlog in New Jersey courts was twice what it was before the pandemic. There is a better chance that the backlog will double once again before it improves, yet there is really no easy answer to get our courts out of the current situation. It’s not just civil cases— there is also a backlog in New Jersey for criminal cases as well.”

Part of the problem is that jurisdictions such as New Jersey that have already relaxed restrictions on court appearances are now dealing with an aggressive third wave of the virus, with a fourth wave has begun to take hold in some parts of the world. When its effects are felt in the court system, it could again grind things to a complete halt and make the backlog exponential.

There are ways technology can play an expanded role this time around, compared to the slow start we had in 2020. But, especially in criminal matters, technology is limited by what it can’t replicate—the guarantees afforded people to appear in person at a trial. Many jurisdictions (including parts of Texas and California) are neither technologically equipped to handle remote jury trials nor can make them happen without the consent of defendants.

While courts and judicial systems have improved over the past year at planning, training their staff, and even investing in the right technologies to keep things moving when and where possible, no courts are equipped with functional crystal balls. Yet the power of accurate foresight is what is needed most to get things back on track in our national system of functional and fair trials.

Perhaps there is no better national example of how the gears powering the court systems have ground to a halt than in the city of New York. The New York Times reported in December that there have been only nine criminal trials in nine months. If that seems like a very small number, it is—the norm would be around 800 trials.

The direct cost of this is obviously much more severe in criminal proceedings. As highlighted in the New York Times piece, there is a profound human cost to these delays:

“Is it fair for people to be languishing in pretrial detention and presumed innocent with no prospect of a trial in the future for them?” said New York’s chief administrative judge, Lawrence K. Marks. “A criminal justice system cannot be, in any sense of the word, fully functioning, if it is not conducting jury trials.”

The logistical nightmares aren’t going away soon and they are going to take the daily hard yards that attorney Epstein describes. “I know that New Jersey lawyers are able and willing to help in any way that we can and I would expect my colleagues in other states to feel exactly the same way. Our clients can’t afford further delays, as this deeply impacts justice.”

This is the case throughout the nation, as the same factors that have created the backlog persist. In both civil and criminal trials, the absence of critically important participants in the case because of lockdown and illness may get worse before it gets better.

#### Criminal courts already clogged---wrecks rule of law.

Smith ’21 [Patrick Smith; July 13; reporter; National Public Radio, “As the Nation's Courthouses Reopen, They Face Massive Backlogs In Criminal Cases,” https://www.npr.org/2021/07/13/1015526430/the-nations-courthouses-confront-massive-backlogs-in-criminal-cases]

Criminal courthouses across the United States are confronting massive case backlogs as they begin slowly reopening after long pandemic shutdowns. It has some prosecutors preparing to drop so-called "low-level cases" because they will not be able to handle the expected crush of speedy trial demands.

Prosecutors in Chicago, for example, are preparing to drop a large number of criminal cases when the courts fully reopen later this year.

Thousands of criminal cases have built up in Cook County over the past 15 months, as the county's massive court system has been all-but shut down because of the COVID-19 pandemic. That means thousands of people locked up in jail, on electronic monitoring or out on bond have essentially had their cases on hold. But the waiting caused by the pandemic could mean many people accused of nonviolent crimes will get off scot-free.

"I think we should be prepared for a system that is going to be overwhelmed," Cook County State's Attorney Kim Foxx said.

Foxx said that will likely mean dropping a large number of lower-level cases in order to prioritize cases involving violent crime.

"We cannot allow for violent cases to fall through the cracks," Foxx said. "And so using that calculus, [we have to make] sure that those cases that could be dealt with outside of the system are in fact purged from the system so we can focus our attention on violence."

Courthouses are likely to see a steep increase in speedy trial requests

The Illinois Supreme Court announced June 30 that courthouses will return to normal in October, and defendants will once again be able to assert their Constitutional right to a speedy trial, a right the Illinois Supreme Court suspended in March 2020 amid COVID-19.

Chicago-based defense attorney Adam Sheppard said he expects to see "a flood of speedy trial demands" across the system.

"It is gonna be overwhelming," Sheppard said.

Foxx said there is no way her prosecutors — or the court system overall — will be able to deal with that coming crush.

"In a scenario where everyone demands [a trial], potentially 30,000-plus cases needing to go to trial within the span of several months, and the reality is our court system, I don't think there's any court system in the world that would be prepared to have that many trials just logistically, staff wise, all of it, it would overwhelm the system," Foxx said.

That pattern could be repeated in jurisdictions across the country, as courthouses try to return to normal with thousands of people who have been waiting months or more for their day in court.

Dropping cases sends the message that "you don't matter"

Meg Garvin, executive director of the National Crime Victim Law Institute at Lewis and Clark Law School, said she's heard of other jurisdictions that are also considering dropping a large number of cases because of backlogs. She's concerned about the message that could send to victims.

"What that says to communities is that you don't matter as much," Garvin said. "And when you are told by a system, 'you don't matter,' you stop turning to the system."

#### No democracy impact.

Doorenspleet ’19 [Renske; 2019; Political Science and International Studies Professor at Warwick University; Rethinking the Value of Democracy: A Comparative Perspective, “Democracy and Interstate War,” Ch. 3]

This finding or ‘law’ has not only been recognized by scholars of international relations, but also found its way outside academia and has influenced foreign policies to promote peace and democracy, most prominently since the 1990s. However, my book will not draw conclusions based on ‘cherry-picking’ of specific studies showing how peaceful democracies are, but on a systematic overview of studies in this field. Therefore, this book relies on my own database with hundreds of different studies, which are relevant for each chapter; the articles had to engage directly with the chapter’s main research question. The next section will provide more detailed information around the selection criteria. This overview includes both highly cited and recent articles which were selected in a systematic way.

Based on analyses of statistical studies around this topic of democracy and war, it will become clear that the overall statistical support for the democratic peace hypothesis is not strong at all. In the rest of the chapter, I will spell out four reasons why democracy does not cause peace, and why the empirical support for the popular idea of democratic peace is quite weak: (1) most studies do not find a strong correlation between democracy and interstate war at the dyadic level, and they show that there are other—more powerful—explanations for war and peace, or even that the impact of democracy is a spurious one, (2) the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear, (3) democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive, and (4) the process of democratization is dangerous and living in a democratizing country means living in a less peaceful country.

In my view, it is difficult—if not impossible—to support the democratic peace hypothesis without any reservations. The key caveats should not be ignored and certainly deserve more attention before we can confidently argue that democracies are more peaceful than other types of political systems. Please notice that I can already reveal that the assumed link between democracy and intrastate war is problematic as well, but this topic will be at the core of the next chapter (Chapter 4).

Selection of Articles: Democracy and War

The instrumental value of democracy cannot convincingly be found in democracy’s expected bond with peace. I have come to this conclusion on the basis of an analysis of statistical studies, which will be discussed in the rest of this chapter. So how did I select the articles for my database?4

For this chapter and Chapter 4, I selected the articles that focused on war and democracy. Using the online database Web of Science (formerly known as Web of Knowledge), I identified a total of almost 8000 articles published in the sampled journals until the end of 2015. I identifed them by entering ‘democr\*’ in the basic search field; this asterisk (\*)-based ‘wildcard’ allows searching for terms including ‘democratic’, ‘democracy’, and ‘democratization’ (in both British and American spellings) simultaneously, in the title, abstract and/or the keywords. As a next step, I excluded articles in which ‘democracy’ is used as synonym for state (e.g. analysis of the relationship between immigration policies and unemployment in European democracies) or a specific political party or movement (e.g. the ‘Democrats’ in the USA, or Uganda’s People’s Democratic Army) or a specifc country (e.g. the Democratic Republic of Congo). In addition, I identified them by entering ‘war\*’ in the basic search feld. The words democracy (democr\*) and war (war\*) need to be mentioned in title and/or abstract—and I also checked for equivalents of ‘war’ like ‘conflict’ and ‘dispute’ and ‘no peace’.5

As it is not feasible to analyse thousands of articles, it is necessary to take a next step in the selection process. I decided to select these articles, which will be part of the database for the third and fourth chapter, in three different ways. The first method is to choose the articles with the most citations. So, for example, in Chapter 3, the articles which are cited more than a hundred times are included in this first list. The article by Beck et al. (1998) has been cited more than 951 times, and as a consequence, this article is part of the database. But also articles with a much lower number of citations (such as Barbieri 1996, with 179 citations) are included in my analyses.

The second method is simply to include the most recent articles published in the past five years, so since beginning 2011 until end 2015. The most recent articles can easily be overlooked by applying the first method of most quoted articles. In my view, however, they still need to be included as they present the most recent findings and engage with the recent and innovative debates, which cannot be ignored in this book. For example, recent studies on democracy and interstate war (Chapter 3) have paid more attention to the mechanisms (see, e.g., Zeigler et al. 2014), and there is a growing attention for the impact of political institutions in recent studies on democracy and intrastate war (Chapter 4; see, e.g., Walter 2015). Those recent findings cannot be ignored in any systematic analysis of statistical studies on this theme.

The third method is the most subjective approach of selecting articles, as it is based on the ‘snowballing method’. So it includes articles which have not been selected by the first and second methods, but which have been quoted extensively and regularly by the previously selected articles. For example, the article by Bethany Lacina (2006) cannot be selected based on having high citations (the first method) and it cannot be included based on being a recent publication (the second method), but it has been mentioned by key studies and hence surfaces via the snowballing method (a third method). This article is important as it clearly distinguishes the determinants of conflict severity from those for conflict onset, and those determinants seem to be quite different, which is crucial information for Chapter 4.

In this way, my study presents and assesses the findings based on a big pool of statistical studies in the published literature. Based on this assessment, I will be able to draw clearer conclusions concerning the significance of the effects of democracy on interstate war (this chapter) and intrastate war (the next chapter). The Appendix shows more detailed information of the selected articles.

The Democratic Peace Hypothesis, Its Roots and Supporters

The democratic peace hypothesis6 states that democracies never or seldom go to war with one another. Where is this powerful idea of ‘democratic peace’ coming from? Before discussing the main findings of the statistical articles and before describing the four caveats of the ‘democratic peace paradigm’, we need to know a bit more around the background and the roots of this idea.

Immanuel Kant’s 1795 essay Perpetual Peace has often been mentioned as the foundation for this hypothesis. Kant believed peace was difficult to achieve, since ‘the natural state is one of war’ (Kant 1795: 10). A state of peace must therefore be established for—in his view—it is certain that hostilities will be committed and people need to be protected from each other. In such a world, each may treat his neighbour, from whom he demands security, as an enemy. In a dictatorship where ‘the subjects are not citizens, a declaration of war is the easiest thing in the world to decide upon, because war does not require of the ruler, who is the proprietor and not a member of the state, the least sacrifice of the pleasures of his table, the chase, his country houses, his court functions, and the like. He may, therefore, resolve on war as on a pleasure party for the most trivial reasons, and with perfect indifference leave the justification which decency requires to the diplomatic corps who are ever ready to provide it’ (Kant 1795: 13).

In contrast, the situation is different in constitutional republics, according to Kant. He argued that the majority of the people in republics would never vote to go to war, except for pure self-defence. Therefore, a world with only republics would be peaceful, since there would be no aggressors. The republican constitution, which requires the consent of the citizens to start a war, gives the positive prospect of perpetual peace.

It is important to note that the ideas of Kant on the one hand and the modern democratic peace scholars on the other hand are not completely similar. For example, Kant talked about republics instead of democratic states as the ideal states to achieve peace. He defined republican states as states with representative governments, in which the legislature is separated from the executive. Not surprisingly—considering the epoch in which he lived—Kant did not include universal suffrage in his definition, which is now seen as an essential dimension of democracy, even of the most minimalist types of democracy (Dahl 1971; see also Chapter 2). Moreover, Kant argued that republics will be at peace in general, which means that such political systems are expected to be not only in peace with each other, but also with other non-republican systems. Nowadays, only few scholars would support this approach of a ‘monadic democratic peace’. As will become clear at the end of this chapter, there is not much evidence for the idea that democracies are more peaceful in general.

Since the 1960s, most statistical studies have not focused on the ‘monadic democratic peace hypothesis’ but on testing the ‘dyadic democratic peace hypothesis’. This dyadic hypothesis states that it is less likely that democracies fight with each other, compared to other ‘dyads’ or other pairs of different types of political systems. The sociologist Dean Babst was the first scholar who started to build on Kant’s old idea in the ‘dyadic’ way, and decided to test it in statistical studies (Babst 1964, 1972). He concluded that ‘no wars have been fought between independent nations with elective governments between 1789 and 1941’ (Babst 1972: 55). His study was not published in one of the journals in the field of international relations, but in a sociological journal and later in Industrial Research. Therefore, it was not read by international relations scholars, and initially, it did not get the attention it deserved in the field of international politics.

Babst’s work was, for example, not cited by Melvin Small and J. David Singer (1976), and their fndings seemed to contradict Babst’s study. However, Small and Singer did not compare the rates of war proneness for democracies and dictatorships, but instead they focused on the question whether wars involving democratic states have historically been significantly different in length or in degree of violence compared to wars involving only dictatorships. For length and degree of violence during the wars, they did not find a difference between democracies and dictatorships, so they concluded that types of political systems did not matter.7 A few years later, Rudolph J. Rummel did cite Babst’s work and replicated Babst’s idea in statistical tests, which were described in the fourth book of his five-volume Understanding Confict and War (1975– 1981). He found clear support for his eleventh (of the 33) propositions about causes and conditions of conflict, which stated that ‘Libertarian systems mutually preclude violence’ (Rummel 1979: 279).

Eventually, those innovative studies from the 1970s helped to evoke the interest in the democratic peace proposition, and in the expected peaceful nature of relationships among democratic states. Since the 1980s, the number of quantitative studies has increased considerably, accumulating into an impressive field of research in international relations with its own ‘empirical law’ of democratic peace (Levy 1989: 270; see also Ray 1998).

This democratic peace hypothesis has not only received support from political scientists, but also from politicians and policy makers. Particularly since 1993, the idea of a democratic peace has inspired American foreign policies aimed at the promotion of peace and democracy. As the 42nd president of the USA (1993–2001), Bill Clinton was the first politician who explicitly bridged the gap between these findings in international relations on the one hand, and his foreign policy strategy on the other hand, at least rhetorically. Anthony Lake, who was Clinton’s National Security Adviser, stated in 1993 that in order to cope with America’s foreign policy challenges, the expansion of democratic states around the world would be essential because ‘it protects our [U.S.] interests and security’ (see Henderson 2002: 20). In his 1994 State of the Union, Clinton declared that ‘Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere. Democracies don’t attack each other’.8 Findings from research in the field of international relations seemed to have a direct impact on policy making, and this move of the Clinton administration can be seen as ‘a textbook case of arbitrage between the ivory tower and the real world’ (Gowa 1999: 109).

Clinton’s successor, George W. Bush, went one big step further in his faith that democratic peace holds. He argued that efforts to turn Iraq into a democratic country would have positive effects on Iraqi’s neighbours. The authoritarian regimes in the region would fall as domino stones and follow the Iraqi example. They would start democratizing as soon as they could, which would then result in achieving a peaceful and stable the Middle East. The real motives for attacking Iraq may have been different, but ‘regime change’ was at the heart of Washington’s rhetoric when the USA started to bomb Baghdad in March 2003. The rhetoric of the Bush administration focused on toppling Saddam Hussein’s regime, and replacing the entire underlying dictatorial system with a democracy.

Moreover, George W. Bush used the democratic peace idea to justify the war in Iraq, declaring, ‘The reason why I’m so strong on democracy is democracies don’t go to war with each other…I’ve got great faith in democracies to promote peace. And that’s why I’m such a strong believer that the way forward in the Middle East, the broader Middle East, is to promote democracy’.9 In 2004, the 43rd President of the USA said: ‘If you think you can have peace without democracy – again - I think you’ll find that - I can only speak for myself, that I will be extremely doubtful that it will ever happen’.10 In his second inaugural address, he stated that ‘the survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world’.

Again, these are just words from speeches and can hence be seen as rhetoric to defend military intervention (cf. Jervis 2003; Kaufmann 2004; Daalder and Lindsay 2005; Owen 2005; Lieberfeld 2005; Schmidt and Williams 2008). Still, in the end, politicians have rationalized their political decisions based on one of the most powerful ideas taken from studies in the field of international relations, clearly showing the influence of this academic idea in political practice.

Hence, the field of international relations seems to have its own law: democracies rarely fight with each other. It cannot be denied that the evidence supporting the democratic peace proposition is quite diverse in character (see Ray 1998): the evidence has been epistemological (Rummel 1975), philosophical (Doyle 1986), formal (Bueno de Mesquita and Lalman 1992), historical (Weart 1994; Ray 1995; Owen 1994), experimental (Mintz and Geva 1993), anthropological (Ember et al. 1992; Crawford 1994), psychological (Kegley and Hermann 1995), economic (Brawley 1993; Weede 1996) and political (Gaubatz 1991). Still, there have been numerous critical studies (see, i.e., Hayes 2011), and the general picture is unclear. We do not yet know much about the overall findings from statistical studies.

So far, it seems as if some quantitative studies—mainly within the field of international relations—have found strong and robust evidence which supports the ‘democratic peace hypothesis’. Those studies show that democracy has had a positive influence on international peace (see, i.e., Rummel 1979; Ray and Russett 1996). In this sense, the idea of a democratic peace seems to be confirmed. Political scientists such as James Lee Ray are passionate supporters: ‘No scientific evidence is entirely definitive’ but ‘based on all the empirical evidence so far’ the more defensible of the two possible definitive answers to the question “Does democracy cause peace?” is “Yes” (Ray 1998: 43). However, based on my own analyses of the empirical studies with statistical evidence, I cannot be as enthusiastic as those scholars; to the contrary, I whole-heartily disagree with them, as a more systematic analysis of the articles shows that there are four important weaknesses, which seriously undermines the idea that peace is one of democracy’s instrumental values.

Caveat 1: It’s Not (Just) Democracy

While analysing the selected articles, the first remarkable finding is that only a relatively small number of studies have actually tested the democratic peace hypothesis. Most of the studies have focused on the mechanisms (see next section, caveat 2), and hence seem to assume that there is a correlation between democracy and war. In this way, the majority of the studies—often unintentionally—reinforce the idea that democratic peace actually exists without testing this proposition. However, none of the studies that directly test the democratic peace hypothesis found strong evidence that democracy is the most important factor when explaining interstate war. All democratic peace studies have controlled for many possible alternative causes of the peace, such as economic development and growth, geographic distance and contiguity, power status, alliance ties, militarization and political stability. The findings show that it is not just democracy which explains war, not at all. Within this group of studies, which explicitly test the democratic peace hypothesis, four different types of findings can be detected. I will discuss those results more in-depth in the rest of this section.

First Result: There Is Correlation, but Other Explanations Are Significant Too

The first subgroup consists of scholars who stress the importance of democratic peace, despite the fact their own analyses have shown that other factors are statistically significant as well (Maoz and Russett 1993; Rousseau et al. 1996; Gleditsch and Hegre 1997; Beck et al. 1998; Ray 2013). For example, some studies (e.g. Rousseau et al. 1996) included alternative independent variables in order to test realist arguments. They tested whether the distribution of power determines decisions to use force, and measures each state’s military capabilities relative to its opponent. A state’s military capability is the average of three elements: number of troops, military expenditures and military expenditures per soldier. They found that this realist variable was strong, positive and statistically significant at the 0.001 level in their analyses (see, e.g., Rousseau et al. 1996: 522, Table 2). However, not only a state’s military capabilities appeared to be an important explanation for peace. In addition, wealth, growth, alliances and contiguity played a crucial role when explaining interstate war (see, e.g., Maoz and Russett 1993: 632, Table 1).11 Moreover, when other factors are included, the impact of democracy on the likelihood of international crises is even spurious (Maoz and Russett 1993: 632; Henderson 2002: 141, see also p. 3).12 Still, scholars in this group keep defending the democratic peace idea, despite the fact that their own analyses showed the significance of alternative explanations.

Second Result: Initially There Is Correlation, but the Impact of Democracy Is Spurious When Other Explanatory Factors Are Included in the Models

The second subgroup of scholars is far more radical. Based on their own analyses, this group concludes that the democratic peace link is a spurious one (Weede 1984, 1996; Barbieri 1996; Mousseau 2013; Gartzke and Weisiger 2014).13 Typically, efforts to demonstrate the spuriousness of the statistical democratic peace pointed to other factors that, when accounted for ‘properly’, eliminated or dramatically reduced the statistical significance of shared democracy. Hence, the studies in this second group did not find strong evidence for the democratic peace hypothesis anymore, once other explanatory factors were included in the models.14

One of the most convincing alternative explanations of peace between countries is that there is no democratic peace, but a capitalist peace instead. The settlement in Germany and Japan succeeded because of the establishment of capitalist peace. Because of economic support by the Americans, who encouraged free trade and offered trade opportunities in practice as well, the poorer economies in Europe and Japan would gain economically, resulting in ‘economic growth, prosperity, and, ultimately, free trade among most of the more technologically advanced economies’ (Rasler and Thompson 2005: 232). By establishing and expanding free trade, the incentives for war would quickly decrease among trading states, according to this approach. To prevent new interstate wars after World War II, the capitalist peace was a far more important factor than the American promotion of democracy and its political institutions.

The capitalist peace, or capitalist peace theory, also states that economic development accounts for both democracy and the peace among democratic nations. Economic development is a key factor to explain democracy (Lipset 1959; see also Hegre 2003; Weede 2004).15 Moreover, economic development also plays a role when explaining peace, and the presence of market-oriented economies in countries have a positive impact on both democracy in those countries and peace between them (Mousseau 2000, 2002, 2003, 2005, 2013; see also Hegre 2014). Democratic peace only exists when both democracies have high levels of economic development, when economic development is well above the global median.

In fact, the poorest 21% of the democracies studied, and the poorest 4–5% of current democracies, are significantly more likely than other kinds of political systems to fight each other (see, e.g., Mousseau 2005). Moreover, if at least one of the democracies involved has a very low level of economic development, then democracy cannot prevent war.16 Still, there is a pacifying effect of free trade and economic interdependence, which is more important than the effect of democracy, because the former affects peace both directly and indirectly, by producing economic development and ultimately, democracy (see Weede 2004).17

Capitalist peace is not the only alternative explanation. Shared interests in general, and political similarities in specific, can also be seen as an important second alternative explanation for war and peace between countries (Farber and Gowa 1995, 1997; Gartzke 2007; Gowa 1999; Henderson 2002). Democracies are not peaceful to each other because they are democratic, but rather because they are similar. So the difference of the scores of both countries also contributes to the conflict proneness of the dyad. If the difference in levels of democracy is big, then the chance of conflict is higher (cf. Oneal and Russett 1997: 281–282).

Many researchers have conflated both the conflict-dampening impact of joined democracy and the confict-exacerbating impact of political distance in the variables focusing on political systems, but as Errol A. Henderson (2002: 32) convincingly argued: ‘Fusing these two contrasting attributes in a single variable makes it difficult to distinguish between the competing processes’. Therefore, it is better to include an additional variable of ‘political dissimilarity’ in the model. Henderson (2002) was one of the first scholars who included this variable and measured it by taking the absolute value of the difference between the two states’ scores. His main variables were not only political similarity, but also geographic distance and economic interdependence, and he concluded that democratic peace is a statistical artefact which disappears when those other variables are taken into account. Political similarity clearly has a pacifying effect18 (see Werner 2000; Henderson 2002; Beck et al. 2004), and it is not democracy per se which is the decisive factor.19

Hence, the benefits of trade and trade interdependence are essential explanations, while democracy is spurious or at least subordinate (see also Rosecrance 1986; Weede 1984, 1996; Hegre 2000, 2014; Jervis 2002; Souva 2003; Rasler and Thompson 2005: 235; Mousseau 2000, 2002, 2003, 2005). Based on those studies, it is safe to conclude that democracy, on its own, is an unlikely cause of the democratic peace.

Third Result: There Is Correlation, but Other Explanations Are Much Stronger

This same point that democracy is just one of the explanations for peace (and not even a very important one) is also at the core of studies in the third subgroup. Scholars of this group keep arguing that there is support for the democratic peace hypothesis, and that the link is not spurious. In this sense, they are less radical than the second group of scholars, as they do not completely reject the value of democracy for peace. On the other hand, their own analyses have clearly shown that alternative factors—hence other factors than democracy or type of political system— are not only statistically significant but also more important when trying to explain interstate war (Bremer 1992; Gelpi 1997; Oneal and Russett 1999a, b; Reiter and Stam 2002; Peterson 2013; Caselli et al. 2015).

Theoretical arguments and empirical evidence suggest that democracy is not the most important factor, while war is more likely to occur between states that are geographically proximate, approximately equal in power, major powers, allied, economically advanced and highly militarized than between those that are not. Bivariate analyses of these factors in relation to the onset of interstate war over all pairs of states in the period from 1816 to 1965 have generally supported these associations. However, multivariate analyses revealed some differences. Stuart Bremer (1992), for example, showed that some factors are far more important than others. The existence of a dangerous, war-prone dyad can be best explained by the presence of contiguity, the absence of an alliance and the absence of more advanced economy. The absence of democratic polity and other factors (absence of overwhelming preponderance, and presence of major power) are less powerful. Overall, these findings suggest that our research priorities may be seriously distorted and that we should not focus too much on the perceived positive impact of democracy, but on other factors (such as alliances and economic factors) instead.

Fourth Result: There Is Correlation, but Only Under Certain Specific Conditions

The final subgroup of scholars argues that we cannot unconditionally accept the idea that democratic peace exists in general, so always and everywhere. Their statistical studies clearly showed that support for this hypothesis heavily depends on other factors. The chance of democratic peace depends not just on the specific historical period (Cold War or not; Gibler and Sarkees 2004; Siverson and Emmons 1991; Weede 1984), but also the stage of the conflict (beginning, duration or severity; see Bremer 1993; Bennett and Stam 1996; Reed 2000), and on the neighbourhood instability (extent of confict in the region; see Gibler and Braithwaite 2013; Gibler and Miller 2013). Despite the differences between the studies, there is one common finding in all studies: when explaining interstate war, we cannot just rely on the impact of democracy, as it is too much dependent on other factors.

Several scholars found strong evidence for the idea that democratic peace exists, but only during some specific historical periods. Based on this evidence, they concluded that democratic peace is simply a statistical artefact of the Cold War. For example, Henry Farber and Joanne Gowa (1995) found statistical support for the idea that peace between democracies is an artefact of the Cold War, when the threat from the communist states forced democracies to ally with one another (see also Mearsheimer 1990). Sebastian Rosato (2003) also argued that most of the significant evidence for democratic peace has been observed after World War II; and that it has happened within a broad alliance, which can be identified with NATO and its satellite nations, imposed and maintained by American dominance.

Since the Second World War, war has become a very costly affair. Scholars discovered that only a handful of states are ‘capable of engaging in major power warfare. That process of elimination has not yet extinguished the possibility of major power warfare, but it has lowered its probability immensely’ (Rasler and Thompson 2005: 219). The chance to achieve something in a war is low in general, and even lower in a bipolar world with two big power players risking high nuclear war costs (Jervis 2002). While war became more costly, trade became less costly; as a consequence, the war/trade costs increased during the Cold War (Rosecrance 1986; see also Jervis 2002). In such a world, war and conflict have become less attractive, while trade and cooperation have become more appealing (Rasler and Thompson 2005: 219). Hence, more states decided to adopt trading strategies in order to prevent confict and war as much as possible. In the end, democracy was part of the story, but only a very small part with a subordinated role next to the power dynamics during the Cold War, the costs of warfare and the benefits of trade.

Some scholars found evidence that the democratic peace still exists in the post-Cold War period (Park 2013) which weakens this argument. However, most analyses showed that dyadic dispute rates have converged after the Cold War (see, e.g., Gowa 2011). Moreover, jointly democratic dyads are likely to be allied only after 1945 (see Gibler and Sarkees 2004); during the 1816–1944 time period, there is even a negative relationship between democratic dyads and alliance formation.20 These findings cast serious doubts on the idea of a general existence of democratic peace.

Not only the historical period, but also the *stage* of the conflict is crucial. Some scholars in this group provided evidence that democratic peace is not universal, but that it depends on the stage and whether we focus on the beginning, duration or severity of the conflict. Although joint democracy has some pacifying effects on the onset of conflict, the results suggest that they are unrelated to the escalation of disputes to war (see Reed 2000). Moreover, democratic peace is dependent on the neighbourhood instability. Democracies often have few territorial issues over which to contend, as they tend to be part of a stable region. Democracies only seldom have territorial disputes with their neighbours, and therefore they can more easily choose favourable conflicts to escalate. The type of political system does not predict conflict selection or victory once controls are added for issue salience (Gibler and Miller 2013; see also Park and James 2015). There is an interaction between joint democracy and regional instability, which confirms the idea that the effects of type of political system on continued conflict apply mostly to dyads in peaceful regions (Gibler and Braithwaite 2013; see also Park and James 2015). Very democratic countries might even become more aggressive and faster than other political systems, once the region becomes more hostile (see, e.g., Baliga et al. 2011).

The General Lesson from the Results in a Nutshell (Caveat 1)

In short, regardless of the differences between the statistical studies on democratic peace, all findings have indicated that other explanations are important as well. It is clear that democracy is just one of the explanations, and certainly not the most important one,21 sometimes even spurious and often heavily dependent on other factors. It is not (just) democracy to be preoccupied with, when trying to prevent war between countries (Table 3.1).

Caveat 2: What Are the Causal Mechanisms?

Most of the statistical studies on democratic peace seem to assume that there is a correlation between democracy and war; based on this assumption, they then decide to focus on the mechanisms. This is problematic as none of the democratic peace studies found strong evidence that democracy is the most important factor when explaining interstate war (see the previous section). As a consequence, the next step of looking for mechanisms is quite irrelevant and not necessary in my view, but most studies nevertheless argue that the field lacks strong theoretical foundations and robust empirical evidence that can reveal convincing causal mechanisms.22 Those studies seem to accept the correlation between dyadic democracy and peace, and then start questioning whether democracy really causes peace before investigating potential mechanisms.

Table 3.1 Statistical studies on democracy and interstate war (dyadic level)

|  |  |
| --- | --- |
| Caveat 1: It’s Not (Just) Democracy | Studies |
| ‘It’s just democracy; democracy is most important explanation for peace between countries’ | No studies found |
| ‘There is correlation, but other explanations are significant too’ | Beck et al. (1998), Gleditsch and Hegre (1997), Maoz and Russett (1993), Ray (2013), and Rousseau et al. (1996) |
| ‘Initially there is correlation, but the impact of democracy is spurious when other explanatory factors are included in the models’ | Barbieri (1996), Beck et al. (2004), Farber and Gowa (1997), Gartzke (2007), Gartzke and Weisiger (2014), Gowa (1999), Hegre (2000, 2003, 2014, Jervis (2002), Mousseau (2000, 2002, 2003, 2005, 2013), Oneal and Russett (1997), Rasler and Thompson (2005), Rosecrance (1986), Souva (2003), Weede (1984, 2004), and Werner (2000) |
| ‘There is correlation, but other explanations are much stronger’ | Bremer (1992), Caselli et al. (2015), Gelpi (1997), Oneal and Russett (1999a, b), and Peterson (2013) |
| ‘There is correlation, but only under certain specific conditions’ | Baliga et al. (2011), Bremer (1993), Bennett and Stam (1996), Farber and Gowa (1995), Gibler and Braithwaite (2013), Gibler and Miller (2013), Gibler and Sarkees (2004), Gowa (2011), Jervis (2002), Mearsheimer (1990), Park (2013), Park and James (2015), Rasler and Thompson (2005), Reed (2000), Rosato (2003), Rosecrance (1986), Gibler and Sarkees (2004), Siverson and Emmons (1991), and Weede (1984) |

#### Overdeterrence is a myth – cartels are massively underdeterred

Lande and Davis ‘17 [Robert; Joshua; 2017; Venable Professor of Law, University of Baltimore School of Law, and a Director of the American Antitrust Institute; Associate Dean for Faculty Scholarship, Professor of Law, and Director, Center for Law and Ethics, University of San Francisco School of Law, and member of the Advisory Board of the American Antitrust Institute; A Report to the 45th President of the United States; “Restoring the Legitimacy of Private Enforcement,” ch. 6]

C. There is No Evidence of Overdeterrence by The Combination of Private And Public Enforcement

Some critics assert that “treble damages, along with other remedies, can overdeter conduct that may not be anticompetitive….”41 Yet, despite the request by the Antitrust Modernization for evidence on this issue,42 “[n]o actual cases or evidence of systematic overdeterrence were presented to the Commission . . . .”43

A recent study, moreover, demonstrates the opposite. This study demonstrates that the combined level of current United States cartel sanctions – the total of private and public remedies - is only 9% to 21% as large as it should be to protect potential victims of cartelization optimally.44 Consequently, the average level of United States anti- cartel sanctions should be increased: there certainly is no overdeterrence.

The United States imposes a diverse arsenal of sanctions against collusion: criminal fines and restitution payments for the firms involved and prison, house arrest and fines for the corporate officials involved. Both direct and indirect victims can sue for mandatory treble damages and attorney's fees. This multiplicity of sanctions has helped give rise to the strongly held - but until this study never seriously examined - conventional wisdom in the antitrust field that these sanctions are not just adequate to deter collusion, but that they are actually excessive.45

The study analyzes this issue using the standard optimal deterrence approach.46 This is predicated upon the belief that corporations and individuals contemplating illegal collusion will be deterred only if expected rewards are less than expected costs, adjusted by the probability the illegal activity will be detected and sanctioned. To undertake this analysis the study first calculates the expected rewards from cartelization using a unique database containing information 75 cartel cases. The study surveys the literature to ascertain the probability cartels are detected and the probability detected cartels are sanctioned. It calculates the size of the sanctions involved for each case in our sample. These include corporate fines, individual fines, payouts in private damage actions, and the equivalent value (or disvalue) of imprisonment or house arrest for the individuals convicted (at $6 million per year).47

The analysis shows that, overall, United States' cartel sanctions are only 9% to 21% as large as they should be to protect potential victims of cartelization optimally.48 This means that, despite the existing public and private sanctions, collusion remains a rational business strategy. Cartelization is a crime that on average pays. In fact, it pays very well.49 Accordingly, the study concludes by proposing a number of ways to strengthen the existing array anti-cartel sanctions and to thereby help deter anticompetitive behavior and save consumers many billions of dollars each year. 50

#### Texas.

Schnurman 12-30 [Mitchell; December 30; Business columnist; covers a wide range of topics; *The Dallas Morning News,* “Sticker Shock: Electricity Prices Jump 17% in Dallas-Fort Worth, With More Hikes Likely,” <https://www.dallasnews.com/business/energy/2021/12/16/sticker-shock-electricity-prices-jump-17-in-dallas-fort-worth-with-more-hikes-likely/>; KS]

Just about everyone seems worried about rising inflation, including the Federal Reserve, and prices in Dallas-Fort Worth have been climbing faster than most places.

One local item really stands out: Electricity in D-FW rose 17.3% in the 12 months ending in November. That was more than double the 6.5% increase for the U.S. city average, according to the U.S. Bureau of Labor Statistics.

D-FW’s price per kilowatt hour, estimated at 15.3 cents in October and November, was the highest monthly average here since the Great Recession 13 years ago. For much of the past two decades, electricity prices in D-FW were lower than the U.S. city average, but that changed in the fall.

“Prices are up and they’re likely to continue to stay up,” Tim Morstad, associate state director of AARP Texas, said during a virtual presentation on the Texas energy market Wednesday.

The cost of natural gas, which sets the price in Texas’ deregulated electricity market, has jumped sharply in the past year. That’s usually the biggest factor in higher rates passed on to consumers and businesses. But more price pressure is on the horizon, including recouping some of the costs from last winter’s big freeze and the expense of hardening the Texas grid.

There are also design changes in the works for the state’s electric market, primarily aimed at improving reliability and keeping the lights on during severe weather. Those reforms won’t come cheap, either.

One estimate projects that average residential bills in Texas could increase by 14.3% next year — apart from increases tied to natural gas, according to a filing this month with the Public Utility Commission.

“These possible bill increases could apply for many years into the future,” said the filing by the Texas Consumer Association and energy consultant Alison Silverstein.

Manufacturers already are dealing with higher costs for most of their inputs, including electricity, said Tony Bennett, CEO of the Texas Association of Manufacturers. He cited higher natural gas prices and higher hedging costs that reflect greater risks.

Some pricing premium for electricity stems from last winter’s storm, he said, but most of those expenses have not kicked in yet: “Higher electricity costs are certainly in our future,” Bennett wrote in an email.

Most Texans live in a deregulated electric market, and shoppers can usually get lower prices than the averages reported by government agencies. For example, the average one-year fixed-rate plan without fees available in the region was 12.4 cents a kWh on Dec. 1, according to the Association of Electric Companies of Texas.

That’s lower than the average D-FW rate reported by the Bureau of Labor Statistics, but it’s nearly 23% higher than the group’s same metric a year ago.

“There is a bottom to the consumers’ pocketbook,” Morstad said.

Most inflation increases in Dallas-Fort Worth over the past year were relatively similar to national trends. Housing costs rose 5.9% here compared with 4.8% for the U.S. average city, for example. But in several categories, D-FW stood apart.

The gap in electricity was notable both for the size of the increase and the fact that local average prices surpassed the national benchmark. That wasn’t the case with gasoline.

D-FW had a sharper rise in gasoline prices than the average city — up 70% in the past year compared with 58%. But the larger jump stems, in part, from gas prices starting at a lower point here.

Despite the larger year-over-year increase, the price of a gallon of unleaded regular gasoline in D-FW was almost 40 cents lower than in the average U.S. city, according to government figures.

Higher energy prices, including oil and natural gas, have been a big contributor to the sharpest rise in inflation in nearly 40 years.

The Federal Reserve, which earlier said that rising prices during the pandemic were transitory, took moves to tamp down inflation. On Wednesday, Fed officials said they would reduce bond purchases earlier than planned and indicated they would raise the federal funds rate up to three times next year.

#### North-East.

DiSavino 12-17 [Scott; December 17; Reporter at *Reuters; Reuters*, “U.S. New England Power Prices Soar to a New 4-Year High on Cold Snap,” <https://www.reuters.com/markets/commodities/us-new-england-power-prices-soar-near-4-yr-high-cold-snap-2021-12-17/>; KS]

Dec 17 (Reuters) - Power prices in New England jumped on Friday to their highest levels since the winter of 2017-2018 on forecasts that homes and businesses will crank up their heaters next week to escape the first cold snap to hit the six-state region this winter.

High temperatures in Boston will drop from 58 degrees Fahrenheit (14 Celsius) on Friday to 34 on Monday, according to AccuWeather. That compares with a normal high of 40 at this time of year.

Next-day power prices in New England spiked from $35 for Friday to $228 per megawatt-hour (MWh) for Monday, the highest since January 2018.

That compares with an average of $51 per MWh so far this year, $26 in 2020, when the coronavirus pandemic depressed demand, and a five-year (2016-2020) average of $37.

High winter prices are nothing new for New England, where the limited number of pipelines regularly become constrained on the coldest days. But this winter could be worse.

#### Energy prices are driving inflation and rising interest rates.

Dobbs ’12-10 [Kevin; 2021; reporter, citing Morgan Stanley analyst Lisa Shalett; Natural Gas Intelligence, “Oil, Natural Gas Prices Drive Sustained Surge in Inflation,” https://www.naturalgasintel.com/oil-natural-gas-prices-drive-sustained-surge-in-inflation/]

Lofty oil and natural gas prices played outsized roles in fueling spikes in inflation this year. November proved no exception, with price increases reaching a pace last recorded nearly four decades ago.

The U.S. Bureau of Labor Statistics (BLS) said Friday the consumer price index surged 6.8% in November from the same month a year earlier, marking the fastest rate since 1982 and the sixth consecutive month of inflation above 5%.

November energy prices soared 33% from a year earlier — far more than any other category tracked by the BLS — and jumped 3.5% from October. The cost of gasoline at the pump was up more than 58% over the past 12 months, according to the federal report.

Energy commodities – chiefly oil and gas – climbed 5.9% month/month in November and 57.5% year/year.

The core price index, which excludes energy and food because of elevated volatility inherent in both categories, rose 4.9% in November from a year earlier. That marked an increase from October’s 4.6% jump and the fastest pace since 1991.

Many analysts expect inflation to persist. “The economic and market environment in 2022 will be decidedly reflationary, with higher economic growth and higher inflation, and eventually higher real interest rates,” said Morgan Stanley analyst Lisa Shalett.

#### Collapses confidence.

Schroeder ’21 [Pete and Howard Schneider; November 8; reporters, citing a Federal Reserve survey; Reuters, “Inflation tops pandemic as investor concern -Fed report,” https://www.reuters.com/business/inflation-tops-pandemic-investor-concern-fed-report-2021-11-08/]

WASHINGTON, Nov 8 (Reuters) - Concerns over higher inflation and tighter monetary policy have become the top concern for market participants, pushing aside the COVID-19 pandemic, the Federal Reserve said on Monday in its latest report on financial stability.

At the same time, the semiannual report also flagged the growing use of stablecoins and "so-called meme stocks" as issues that merit attention and pose new types of potential risks to the financial system.

Roughly 70% of market participants surveyed by the Fed flagged inflation and tighter Fed policy as their top concern over the next 12 to 18 months, ahead of vaccine-resistant COVID-19 variants and a potential Chinese regulatory crackdown.

#### 1 – High energy prices aggravate inflation.

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

However, higher energy prices could aggravate inflation and prompt the Federal Reserve to withdraw its easy monetary policy sooner, damping economic growth.

JPMorgan Chase economists believe higher oil prices could push up the annual inflation rate by 0.4 percentage point in coming months.

In August, consumer prices rose 4.3% from a year earlier, according to the Commerce Department’s price index for personal-consumption expenditures, the Fed’s preferred inflation gauge. The Fed targets annual inflation of 2%. Oxford Economics projects that energy prices will help push up the annual inflation rate to 5.1% by year-end.

“It’s going to elevate inflation expectations somewhat,” said analyst Bart Melek of TD Securities. “It might change our perception of what we think the Federal Reserve does.”

In the early and mid-2010s, high oil and gas prices were generally a boon for the U.S. economy, encouraging oil and gas producers to tap ample shale deposits, driving up demand for steel, equipment, construction workers, truck drivers and other workers.

That might not happen this time, Mr. Book said. The pandemic caused global demand for energy to collapse and while demand has recovered, energy companies are still cautious about drilling because of uncertainty about global demand and investor pressure to keep profit margins high, in part by limiting supply, he said.

#### 3 – High energy prices guarantee interest rate hikes – causes corporate crunch.

Joffe ’12-20 [Marc; 2021; Finance MBA at NYU, Former Senior Director for Moody's Analytics; the Hill, “For the Fed, taming inflation has risks,” https://thehill.com/opinion/finance/586517-for-the-fed-taming-inflation-has-risks]

But the biggest fiscal risk may stem from corporate lending. Rather than issue fixed-rate bonds, many highly leveraged companies rely on the syndicated bank loan market where most borrowing takes place on a floating rate basis. According to research from Fitch Ratings, $1.6 trillion of syndicated loans are currently outstanding with almost all borrowers carrying either speculative grade credit ratings or the lowest investment grade rating (Baa3 on Moody’s scale or BBB- from S&P, Fitch and other agencies).

Syndicated loans are distributed across multiple banks with about half of the volume packaged into Collateralized Loan Obligations (CLOs). Although analogous to the subprime Residential Mortgage-Backed Securities (RMBS) that triggered the Great Recession, CLOs have generally performed well over their 30-year history.

The loans packaged into subprime RMBS and CLO deals have high default risk, but corporate borrowers have generally proven more reliable than homebuyers with low credit scores. That may change when the Fed starts raising interest rates, especially if the hikes are precipitous.

A wave of leveraged loan defaults could harm both CLO investors and banks — to the extent that they continue to hold syndicated loans on their books. Because CLOs are well diversified, it is unlikely that defaults will impact investors in the senior AAA/Aaa rated tranches.

But if a lot of leveraged corporate borrowers are forced into bankruptcy by higher interest costs, we could see waves of layoffs. Suppliers to failing companies may also face late and/or partial payments, spreading the pain around the economy.

In this way, a sharp increase in interest rates could significantly slow economic growth or even trigger a recession.

#### Precede recessions.

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

Energy prices are volatile even in normal times, and particularly unpredictable now because of the cloudy economic outlook and how governments and investors will respond to the shortage of supplies. Investors are pressing companies to maintain high prices and profit margins by resisting drastically expanding production.

Energy represents a sizable chunk of consumer budgets. In August, about 7% of consumer spending went toward energy, according to the Labor Department. Historically, high energy prices have often preceded recessions. Consumers can’t easily cut consumption on short notice, as they can with discretionary purchases, so higher prices act as a tax, draining the money they have available to spend on other goods and services.

Growth slowed sharply this summer as rising Covid-19 infections due to the Delta variant prompted a new round of business restrictions and consumer caution. The Federal Reserve Bank of Atlanta estimates that growth slowed from 6.7%, annualized, in the second quarter to 1.3% in the third.

#### Antitrust is good for business confidence---it’s a substitute for regulation

Edlin ‘8 [Aaron; Summer 2008; Richard Jennings Chair, Professor of Economics and Law at the University of California at Berkeley; Antitrust, “Perspectives on the Future Direction of Antitrust,” vol. 22]

My grandfather preached “moderation in all things.” Were he alive today, he would despair to see the state of U.S. antitrust.

At the crudest level, moderation would demand that sometimes the plaintiff wins, other times the defendant. Yet, if there be any consistency in today’s antitrust it is that “the defendant always wins,” criminal price-fixing aside. We have come a long ways from the days of Potter Stewart’s famous quip.

More fundamentally, strong antitrust enforcement has always been thought a good substitute for regulation and government ownership. Simply put, if antitrust ensures competition, then regulation is unnecessary. Yet, in the last three decades we deregulated and privatized substantial portions of the economy and have simultaneously pared back the antitrust laws.

Airlines, trucking, electricity, telephones, and the Internet, have all moved from full regulation or government ownership to a softer regulated competition. Banking too has been substantially deregulated and the walls between banking and insurance have come down.

With so much deregulation, my grandfather would have expected the antitrust courts and enforcement authorities to be extending their reach. Not so.

Sylvania, Business Electronics, Khan, and now Leegin, have made vertical agreements all but per se legal. In theory, tying cases remain per se illegal, but expect that to end soon enough. Section 2 seems vestigial, with no DOJ cases started this century. Predatory pricing cases seem almost unwinnable. And, the intellectually bankrupt reliance on profit sacrifice and price-cost comparisons in predatory pricing has drifted toward becoming the rule for all exclusionary cases.

And, while the substantive antitrust abuses have been cabined, pleading hurdles have been heightened. After Twombly, Nynex, and Trinko, plaintiffs are scrambling even to state a claim, let alone to meet the burden of proving one.

Ironically, because many of the deregulated industries maintain some level of regulation. Trinko and Credit Suisse provide increased immunity from antitrust violations, even when the (de)regulatory statute seems to disclaim such immunity.

So my grandfather would not be happy.

Sometimes though, the times may call for immoderateness. Could something have changed that justified less regulation and less antitrust? Many point to a rationalization with economics and a realization that the U.S. had become far too interventionist by the early 1970s. Indeed, economics does preach the virtues of laissez faire. Economists, however, also recognize that market failures from information or natural monopoly justify intervention. And, ironically, the same three decades that have seen this pullback have seen economists increasingly recognizing the myriad failures of markets.

Perhaps globalization obviates the need for antitrust? Maybe in some markets. But globalization can be easily fit in the framework of traditional antitrust analysis if it means broader geographic markets and more actual or potential competitors. No changes in law are required.

Viewed in isolation many of the changes to antitrust seem to me to be improvements. Together, though, they represent a massive shift whose justification I question. Could antitrust be losing its way?

#### Removing market manipulation increases market confidence.

FERC ’18 [Federal Energy Regulatory Commission; September; “Federal Energy Regulatory Commission Strategic Plan Fy 2018-2022;” <https://www.ferc.gov/sites/default/files/2020-04/FY-2018-FY-2022-strat-plan.pdf>; KS]

Objective 3.2: Facilitate public trust and understanding of Commission activities by promoting transparency, open communication, and a high standard of ethics.

Facilitating understanding of how the Commission carries out its responsibilities and maintaining public trust in the Commission are important components of the Commission’s commitment to organizational excellence. Trust and understanding increase acceptance of FERC decisions and reduce the potential for the public to dispute FERC rules and regulations, thus enabling the creation and enforcement of policy.

The Commission achieves this objective by maintaining processes and public information services that promote transparency and open communication with respect to the conduct of the Commission’s business. FERC’s proactive communication, along with an online document repository and timely responses to inquiries, foster awareness and understanding of the Commission’s activities.

The Commission also advances this objective by maintaining internal processes and services that ensure adherence to statutes, regulations, and self-imposed standards. In addition, FERC provides training and guidance to promote an ethically informed workforce. These activities further encourage public confidence in the Commission’s activities and ability to fulfill its responsibilities.

### T-Structural Remedies – 2AC

#### ‘Prohibitions’ disallow specific actions.

Blackmun ’92 [Harry Andrew, Anthony McLeod Kennedy, and David H Souter; Justices on the Supreme Court of the United States; Lexis, “Cipollone v. Liggett Group,” 505 U.S. 504]

Although the plurality flatly states that the phrase “no requirement or prohibition” “sweeps broadly” and “easily encompass[es] obligations that take the form of common-law rules,” ante, at 2620, those words are in reality far from unambiguous and cannot be said clearly to evidence a congressional mandate to pre-empt state common-law damages actions. The dictionary definitions of these terms suggest, if \*536 anything, specific actions mandated or disallowed by a formal governing authority. See, e.g., Webster's Third New International Dictionary 1929 (1981) (defining “require” as “to ask for authoritatively or imperatively: claim by right and authority” and “to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation)”); Black's Law Dictionary 1212 (6th ed. 1990) (defining “prohibition” as an “[a]ct or law prohibiting something”; an “interdiction”).

#### ‘Anticompetitive business practices’ restrict competition.

OECD ’3 [Organization for Economic Cooperation and Development, April 24; Glossary of Statistical Terms, “Anticompetitive Practices,” https://stats.oecd.org/glossary/detail.asp?ID=3145]

Definition:

Anticompetitive practices refer to a wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality.

#### ‘Antitrust law’ includes any statute restraining anticompetitive behavior, through civil action or prohibition.

US Code ’21 [United States Code Annotated; current as of July 2021; Westlaw, “§ 1311 Definitions,” 15 U.S.C.A. § 1311]

(a) The term “antitrust law” includes:

(1) Each provision of law defined as one of the antitrust laws by section 12 of this title; and

(2) Any statute enacted on and after September 19, 1962, by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce;

### Cap K (Emory) – 2AC

#### Perm do both---it expands antitrust to leverage the benefits of capitalism while moving towards socialism.

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

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

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

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

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

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

#### Cap sustainable and solves environmental risk.

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

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

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

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

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

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

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

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

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

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

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

Renewable profitability

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

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

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

Red China goes green

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

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

Hydrogen in three colours

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

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

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

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

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

Electric cars

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

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

From coal to wind

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

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

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

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

Nuclear

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

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

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

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

The fate of the oil majors

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

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

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

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

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

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

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

#### Rapid growth key to space colonization---extinction.

Kovic '19 [Marko; March 2019; co-founder president of the Zurich Institute of Public Affairs Research; "The future of energy," https://osf.io/preprints/socarxiv/aswz9/download]

Ideally, the mitigation of climate risks will coincide with and contribute to the development of improved or even entirely novel sources of energy that will increase the long-term chances of humankind’s survival by means of space colonization. This is not an unrealistic expectation, given that the mitigation of climate risks consists, to a large degree, of replacing fossil fuels with other, less harmful sources of energy. However, some climate change mitigation strategies might actually harm the long-term prospects of humankind.

First, it is possible that dominant climate change mitigation strategies will actively exclude any form of nuclear energy from the repertoire of climate-friendly energy sources. Existing and experimental (molten salt) fission reactors could play a significant role in replacing carbon-heavy energy sources, but pro-environmental attitudes often overlap with anti-nuclear sentiments [65]. As a result, and in combination with other problems such as large-scale market failures of existing fission reactors (one of the reasons being that generating electricity from fossil fuels is cheaper) [66], nuclear fission does not currently have significant standing as a “cleantech” contribution to climate change mitigation. From a long-term perspective, an unfavorable view of nuclear energy in the context of climate change might mean that technological progress in the areas of nuclear fission and fusion might come to a halt (for example, due to explicit bans or implicit disincentives). If such a scenario came to be, our attempts at colonizing space would almost certainly fail: There are currently no alternatives to fission and fusion, and it is highly improbable that Solar power alone could suffice for sustaining extraterrestrial habitats.

Second, there is some probability that climate change mitigation strategies will change the social order towards a degrowth philosophy. Degrowth is a vague socio-economic concept and social movement that, in general, calls for a contraction of the global and national economies by means of lower production and consumption rates, and, to some degree, to more profound changes to the “capitalist” system of economic production [67]. Degrowth or degrowth-like approaches are being actively considered as climate risk mitigation strategies [68, 69], and degrowth would almost certainly be a highly effective measure for mitigating climate change. After all, if we were to drastically reduce or even completely eliminate the (industrial) sources of greenhouse gases, the amount of greenhouse gases that are being emitted would accordingly drastically sink. From the long-term perspective of humankind’s survival, degrowth is problematic in at least two ways. First, there is a risk that the general contraction of economic activity would also slow or eliminate progress in the domain of energy, which would, in turn, reduce the probability of successful space colonization due to an absence of suitable energy sources. Second, and more fundamental: If degrowth were to become a dominant societal paradigm, it is uncertain whether the long-term survival of humankind by means of space colonization would be regarded a desirable goal. In a literal sense, establishing extraterrestrial colonies would mean growth; the size of the total human population would grow, and the area of space-time that humans occupy would grow.

In a more philosophical sense, degrowth might even be antithetical to space colonization. Even though both degrowth and space colonization have a similar moral goal – increasing wellbeing – , the ends to that goal are very different. Within degrowth philosophy, the goal is, metaphorically speaking, not to “live beyond our means”: We should strive for “ecological balance”, and such a state should increase the average wellbeing. But the frame of reference is the status quo; Earth and humankind as we know it today. Space colonization, on the other hand, operates with a much larger frame of reference: All the future generations of humans (and other sentient beings) who could enjoy wellbeing if we succeed in colonizing space – and who will categorically be denied that wellbeing if we fail to colonize space [70]. The goal of space colonization as a moral project is not to live beyond our means, but to actively redefine and expand what our means are through scientific and technological progress.

### 14th Amend

#### 2 – Regulations cannot create private rights of action.

DOJ ’21 [Department of Justice; February 3; Federal executive department of the United States government tasked with the enforcement of federal law and administration of justice in the United States; *Department of Justice,* “IX. PRIVATE RIGHTS OF ACTION AND INDIVIDUAL RELIEF THROUGH AGENCY ACTION,” <https://www.justice.gov/crt/fcs/T6Manual9>; KS]

The Supreme Court’s Sandoval decision left open the question whether an individual may bring an action under 42 U.S.C. § 1983 to enforce Section 602 regulations. Sandoval, 532 U.S. at 300–01 (Stevens, J., dissenting). A year later, the Supreme Court answered this question in a case brought under Section 1983 to enforce the Family Educational Rights and Privacy Act (FERPA), finding that there is no private cause of action via Section 1983. Gonzaga Univ. v. Doe, 536 U.S. 273, 290 (2002). The issue before the Court was whether a plaintiff could bring an action under Section 1983 to enforce FERPA, even though FERPA created no private right of action. Id. The Supreme Court explained that there is no private right of action: “We have held that ‘[t]he question whether Congress … intended to create a private right of action [is] definitively answered in the negative’ where a statute by its terms grants no private rights to any identifiable class.” Id. at 283-84 (citing Touche Ross & Co. v. Redington, 442 U.S. 560, 576 (1979)). Following Sandoval and Gonzaga, a majority of circuits have held that where a statute does not confer a private enforceable right, regulations promulgated under the statute cannot create a private right of action.[3] Therefore, the regulations promulgated under Section 602 are unenforceable via a private action under Section 1983.

#### 3 – No private right of action or treble damages – Vaheesan & Gorodetsky say only private right of action create sufficient deterrence.

Hovenkamp ’12 [Hebert; December 21; Ben V. & Dorothy Willie Professor of Law, University of Iowa; *Penn Law: Legal Scholarship Repository;* “Antitrust and the 'Filed Rate' Doctrine: Deregulation and State Action,” <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2853&context=faculty_scholarship>; KS]

Speaking through Justice Brandeis, the Supreme Court held in Keogh that although the Interstate Commerce Act did not exempt railroads from antitrust liability, a private plaintiff may not recover treble damages based on an allegedly monopolistic tariff rate 3 filed with the ICC. Keogh very likely grew out of Justice Brandeis's own zeal for regulation and his concern for the protection of small business—in this case, mainly 4 shippers whom he felt were protected from discrimination by filed rates. The Keogh doctrine served to absolutize regulated rates by making them nearly immune from collateral attack. Under various degrees of deregulation, the doctrine makes little sense.

Justice Brandeis gave four reasons for this rule, each of which was later criticized by Judge Friendly (although he ultimately followed Keogh) in the Square D case. First, Justice Brandeis doubted the need for an antitrust remedy, for Interstate Commerce Act §85 gave shippers injured by illegal filed rates their actual damages plus attorney's fees. However, Judge Friendly pointed out that antitrust damages are often available to those with remedies under other bodies of federal law.7

Moreover, no remedy would be available from the ICC for an approved rate that had in fact been the product of an earlier conspiracy. And increasingly under deregulation, competition has determined reasonableness.8

Second, Justice Brandeis emphasized that the filed rate was legal for all purposes and not to be “varied or enlarged by either contract or tort of the carrier.”9 Granting an antitrust damage remedy to some shippers would result in an arbitrarily discriminatory rate structure inconsistent with the purpose of the Interstate Commerce Act to prevent rate discrimination among shippers. Even if every shipper brought an action, the net rates would be discriminatory “unless the highly improbable happened, and the several juries and courts gave to each the same measure of relief.”10 But Judge Friendly pointed out that modern class actions increase the likelihood that all shippers affected by a monopoly rate can be joined and receive uniform relief and that the Brandeis argument proves too much. In all cases, one who recovers treble damages from a supplier receives a lower net price than those who do not. This puts the successful plaintiff in a favored position over the one who was equally injured but who failed to litigate or did so unsuccessfully.11

Third, Justice Brandeis noted that antitrust damages depend on proof that the rate paid exceeded the hypothetical rate that would have prevailed in the absence of the illegal conduct and that this hypothetical rate would have been approved by the ICC. What the ICC would have approved is a question better determined, at least initially, by the Commission rather than by the courts.12 But antitrust damages, far from forcing any particular rate on the ICC, merely reflect an estimate of what the price would otherwise have been­—neither more nor less accurately than in antitrust cases generally.13 Nor are damages necessarily more intrusive on agency processes than the antitrust injunctions available to private parties.15

Finally, Justice Brandeis believed that a shipper would not really be injured by an illegal rate that applied equally to its competitors, for all of them would then simply pass on the overcharge to their customers. The loss they actually absorbed would be purely speculative. But subsequent antitrust rulings have allowed those who pay an illegal overcharge to recover it (trebled) whether or not they passed it on.16 In any event, even if shippers in competition with one another are not injured significantly, the larger injury would accrue to consumers who would ultimately pay more for goods or services delivered by common carriers, or produced with energy supplied by price-regulated utilities.

The Supreme Court's Square D decision conceded that Keogh may have been “unwise as a matter of policy,”17 but reaffirmed it nonetheless on the ground that Congress had had ample opportunity to overturn it but had not done so.18 Since then the Supreme Court and lower courts have persisted in applying the doctrine and have even broadened its scope.

The implications of Keogh and Square D are that overcharge actions by consumers based on claims that a “filed” rate19 constitutes an antitrust violation will be dismissed. The rate must merely be filed and technically approved by the agency. It need not have been actively reviewed for accuracy or public interest considerations—indeed, it need not have been received at all in any meaningful sense.20 The doctrine operates as a rule against collateral attack: once filed, a rate may not be collaterally attacked in the courts. However, an objector may be able to ask the regulatory agency to review a rate within its jurisdiction, considering the objection.21 Of course, that proceeding would not be in antitrust and would not provide treble damages and attorney's fees as an inducement.

#### No impact.

Sebastian **Farquhar 17**. Director at Oxford's Global Priorities Project, Owen Cotton-Barratt, a Lecturer in Mathematics at St Hugh’s College, Oxford, John Halstead, Stefan Schubert, Haydn Belfield, Andrew Snyder-Beattie, 01-23-17, "Existential Risk Diplomacy and Governance", GLOBAL PRIORITIES PROJECT 2017, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

1.1.3 Engineered pandemics For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### Adv CP

#### FERC lack experience and expertise – rates may seem reasonable to the agency, but are the result of a price-fixing regime.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

Unfortunately, the actions by the regulators are very troubling. FERC's failure to detect market manipulation in California stems from the agency's general lack of familiarity with deregulation and market- based tariffs monitoring.159 FERC has extensive expertise with cost-of- services rates, but market-based tariffs are very different.160 Thus, while FERC has the expertise to determine just and reasonable cost-of-service rates, it lacks similar expertise in determining which market-based rates are just and reasonable.161 Further, FERC has failed to make the requisite findings to address this problem. Until recently, FERC had never taken upon itself to devise rules and parameters for efficient markets.162

Thus, judicial deference to FERC's expertise in the context of market-based tariffs is unwarranted because the agency lacks both experience and expertise in the subject matter. Further, FERC is not equipped with the proper jurisdictional authority to retroactively remedy the claims resulting from tariffs FERC itself has found to be unfair and unreasonable.163 Given the situation, judicially enforced antitrust laws would be more efficient in addressing potential market power manipu- lation. Unlike FERC, courts possess a solid and constantly evolving expertise in dealing with competitive markets.164 Further, courts are more responsive than agencies to legislative actions aimed at remedying potential market power abuse. Also, courts can issue retroactive remedies.165

During California's crisis, FERC was confronted by a market which operated extremely fast and which was not structurally competitive.166 Further, FERC was faced with "aggressive traders and generators primed to find and use loopholes in the protocols to increase their companies' profits and their personal bonuses.”167

FERC, however, did not take these competitive market realities into account. It analyzed the filed market-based rates by looking at the market share of the regulated utility under the faulty assumption that insufficient market share effectively denies the potential for market manipulation.168 FERC assumed that generators with market shares of less than twenty percent were incapable of exercising market power.16 However, the numbers employed by FERC were erroneously borrowed from the measures used by DOJ and FTC in analyzing a firm's market power in nonelectricity markets.170 The unique characteristics of the electricity market confer market power on a utility with market share as small as one percent during peak hours of demand.171

The lack of synchronization between retail and wholesale rates, which contributed greatly to the California crisis, further highlight FERC's inexperience with market-based rates. It also shows the income- patibility between the filed rate doctrine and maintenance of a properly functioning competitive market.

When California froze its retail prices, it assumed that FERC would impose much lower wholesale prices during the period of transition to the newly deregulated market.172 If such calculations were correct, the "headroom" between retail and wholesale prices would have allowed utilities to recover costs following the state-ordered unbundling.173 This assumption proved to be a serious miscalculation on the part of the state.174 When the wholesale prices soared, Pacific Gas and Electric Company started to accumulate massive debts and eventually filed for bankruptcy, unable to recover costs in the retail market.175

While the state retail market based its rate calculation on a mistaken assumption in regards to wholesale rates, FERC's wholesale rates were approved based on retail tariffs.176 FERC required that wholesale seller either show that they lacked market power or that they took measures to mitigate such power in order to have their rates approved.177 One of the "measures" taken by the wholesale sellers was to successfully claim that the retail market rate freeze would prevent them from passing higher costs to the consumers.178 However, FERC's decision to approve these wholesale rates, no matter how faulty, was immune from judicial review pursuant to the filed rate doctrine.179 In Pacific Gas & Electric Co. v. Lynch, the California district court held that FERC was not "obligated to adjust wholesale rates to harmonize with retail rates," even if FERC did rely on the state retail price freeze in its initial calculation of market- based rates.180

Further, FERC's authority to impose penalties only extends to ordering prospective refunds for rates not found to be "just and reasonable.”181 FERC cannot administer any other monetary penalties against violators.182 Thus, FERC is not effective in policing deregulated markets and deterring future violations.183 Further, the "just and reasonable" rate standard does not account for the fact that the market- based rate may seem "reasonable" to FERC yet be a result of a price- fixing conspiracy, and thus higher than the rate dictated by free market competition.184 Thus, antitrust violations could pass FERC's review unnoticed.

FERC's Order, issued on December 15, 2000, in response to California's electricity crisis, revealed the extent of FERC's inability to discipline the wholesale market.185 The Order announced that FERC would not intervene and stated two major conclusions.186 One acknowledged that FERC was under the obligation to ensure that wholesale prices were just and reasonable and that the state's current wholesale rates, all previously filed and approved by the FERC, were neither just nor reasonable.187 That conclusion notwithstanding, FERC refused to cap the current wholesale prices.188 The second conclusion referred to the demand for retroactive relief, which FERC denied.189 It cited the filed rate doctrine as justification for the assertion that all rates previously found by FERC to be just and reasonable were not eligible for a refund.190

FERC's Order made it clear that the filed rate doctrine applied to cost-of-service and market-based rates alike, thus revealing FERC to be a "paper tiger" incapable of disciplining competitive markets.191 The file rate doctrine became a legal loophole for rampant abuse in the already dysfunctional California market. 192 The Order, coupled with the knowledge that FERC was probably incapable of deterring price and market power manipulation, invited utilities to "game the system at will" by manipulating electrical supply and demand and driving prices upwards.193 Predictably, prices increased substantially, and the general result of the FERC Order was that "[t]he equivalent of outright looting occurred in plain sight.194

The extent of FERC 's lack of expertise in dealing with deregulate market prices was further confirmed by the findings of the Senate Committee on Governmental Affairs staff report in regards to FERC investigation of the Enron scandal.195 The report cited a "shocking absence of regulatory vigilance on FERC's part and a failure to structure the agency to meet the demands of the new, market-based system that the agency itself has championed.”196

### FTC DA (Emory) – 2AC

#### Plan is the FERC.

Farmer ’88 [Kiplyn; American lawyer specializing in personal injury, criminal law, and worker compensation; “FERC WAIVER OF THE FILED RATE DOCTRINE: SOME SUGGESTED PRINCIPLES,” <https://www.eba-net.org/assets/1/6/31_9EnergyLJ497(1988).pdf>; KS]

On April 22, 1988 the D.C. Circuit, on rehearing, affirmed that the Fed- eral Energy Regulatory Commission (FERC)1 is free to consider whether it has the authority to waive the "filed rate doctrine.' 2 This determination was the result of a suit brought by Columbia Gas Transmission Corporation (Columbia), a gas purchaser, after the FERC authorized five pipelines to col- lect a surcharge over and above the rates which were filed with the Commis-sion at the time of sale.3 The FERC maintained that it has implied authority to waive the filed rate doctrine4 under the Natural Gas Act (NGA) and that its authority was upheld in City of Piqua v. FERC.6 Although the court over- ruled the Commission's decision in ColumbiaGas7 because the affected parties were not on notice as to the increase in rates caused by the waiver,8 it opened the door to the possibility of allowing the FERC to establish guidelines regard- ing the circumstances in which it could waive the filed rate doctrine in the future. If the FERC is to retain authority to waive the doctrine when it determines that such a waiver is required in order to carry out its statutory mandate that rates and charges be just and reasonable,1" it must establish cri- teria consistent with the principle that the FERC is prohibited from retroac- tive rate-making.'1 This article focuses on the issue of the FERC's authority to waive the filed rate doctrine by permitting rate changes to be made effective retroactively and recent judicial interpretations of the doctrine which the FERC will be required to consider in establishing its guidelines.

#### FTC overload now.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Even if the will to stop it exists, the FTC doesn’t have the funding to stop this boom. In fact, it hasn’t had the funding to keep up with a steady uptick in mergers in years. Aside from the recent spike, the total number of premerger filings [increased](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino/p110014hsrannualreportfy2019_0.pdf) by 80 percent over the last 10 years. In 2010, corporations filed 1166 premerger notifications. By 2019, yearly filings almost doubled to 2089.

While the number of transactions the FTC is charged with regulating has increased steadily, the number of enforcement actions — challenges to anticompetitive mergers or conduct — has stagnated.  A 2020 paper from Equitable Growth showed that while the number of [enforcement actions](https://equitablegrowth.org/wp-content/uploads/2020/11/111920-antitrust-report.pdf) from both the FTC and DOJ hovered at about 40 challenges per year from 2010 to 2019, even as the number of corporations seeking merger approval grew. The FTC’s enforcement actions over the past ten years show the agency hasn’t kept up with increased HSR filings: while FY 2010 saw 22 enforcement actions for 1166 reported mergers, a ratio of approximately one enforcement action for every 53 mergers, FY 2019 saw a mere 21 enforcement actions for 2089 mergers, meaning there was only one FTC enforcement action for every 99 mergers.

Overall funding and staffing levels at the FTC have similarly stagnated. Then-FTC commissioner Rebecca Slaughter said in 2020 that it is an “[indisputable](https://www.ftc.gov/system/files/documents/public_statements/1583714/slaughter_remarks_at_gcr_interactive_women_in_antitrust.pdf)” fact that FTC funding has not kept up with market demands; according to Slaughter, the FTC budget has only increased by 13% since 2010 and the employee headcount decreased. This budget increase has not come from increased discretionary appropriations from Congress however, but from a massive increase in merger filings and their accompanying fees. Startlingly, Slaughter notes that “the FTC had roughly 50% more full-time employees at the beginning of the Reagan Administration than it does today.” The situation has become so dire that increased budgets for the enforcement agencies has become a rare [bipartisan](https://www.law360.com/articles/1368496/klobuchar-says-congress-has-rare-shot-at-antitrust-overhaul) issue in the Senate.

#### No resources and thumpers.

Kades ‘21 [Michael; July 28; Director of Markets and Competition Policy, former attorney at the Federal Trade Commission; Equitable Growth Foundation, “Competitive Edge: Congress needs to restore the Federal Trade Commission’s authority to seek monetary remedies when companies break the law,” <https://equitablegrowth.org/competitive-edge-congress-needs-to-restore-the-federal-trade-commissions-authority-to-seek-monetary-remedies-when-companies-break-the-law/>]

As the report explains, “Rather than deter anticompetitive behavior, current legal standards do the opposite: They encourage it because such conduct is likely to escape condemnation, and the benefits of violating the law far exceed the potential penalties.” In the face of such warnings, it is a particularly bad time for the Supreme Court to unanimously reject 40 years of lower court rulings and conclude that the Federal Trade Commission can neither force companies to give up the profits they earned by violating the law nor compensate the victims of those violations. (The first remedy is called disgorgement, and the second remedy is called restitution.)

Whether the Supreme Court in April correctly interpreted the statute at issue in the case, AMG Capital Management LLC v. Federal Trade Commission, is less important than its implications. Professor [Andy Gavil discusses a potential silver lining](https://equitablegrowth.org/competitive-edge-the-silver-lining-for-antitrust-enforcement-in-the-supreme-courts-embrace-of-textualism/) in the Supreme Court’s decision—the glass-half-full approach. He argues that if the Supreme Court faithfully applies its approach to statutory interpretation, then it could open the door to broader application of the antitrust laws.

I look at the direct impact of the decision—the glass-half-empty approach. I argue that the decision deprives the antitrust agency of a critical, albeit imperfect, weapon that has deterred anticompetitive conduct particularly in the pharmaceutical industry. Although it has used disgorgement in competition cases sparingly, those awards have deterred the entire industry from engaging in the challenged conduct.

Before the recent Supreme Court decision, the disgorgement awards in competition cases went far beyond the impact in a single case. The savings include benefits from the conduct that did not occur. If the commission cannot seek monetary remedies, then companies will keep the rewards of their illegal conduct. Perversely, the companies causing the greatest harm will benefit the most from April’s decision.

The impact reaches even further. Without the threat of a disgorgement award, companies are more likely to drag out litigation and tax the FTC’s limited resources. Because the commission will spend more resources on egregious cases to reach weaker results, it will have fewer resources to challenge anticompetitive conduct in other areas and, for example, could affect enforcement in merger cases or in the high-tech industry.

#### Courts will stonewall FTC initiatives.

McLaughlin ’21 [David; June 23; Reporter; Bloomberg Businessweek, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts,” <https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda>]

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the [most prominent antagonists of big business](https://www.bloomberg.com/news/articles/2020-10-26/how-big-is-bad-has-become-a-big-big-deal)—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a [law review article](https://www.yalelawjournal.org/note/amazons-antitrust-paradox) she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with [Apple Inc.](https://www.bloomberg.com/quote/AAPL:US), [Amazon.com Inc.](https://www.bloomberg.com/quote/AMZN:US), [Alphabet Inc.](https://www.bloomberg.com/quote/GOOGL:US), and [Facebook Inc.](https://www.bloomberg.com/quote/FB:US) among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of [abusing their dominance](https://www.bloomberg.com/news/articles/2020-10-06/house-panel-calls-for-sweeping-antitrust-reforms-for-big-tech) to thwart competition, and lawmakers are considering a [raft of bills](https://www.bloomberg.com/news/articles/2021-06-11/u-s-tech-giants-would-have-to-exit-businesses-under-house-plan) to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House [report](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf). It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker [Qualcomm](https://www.bloomberg.com/quote/QCOM:US). In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

“If you want to change the world, at some point it goes to the courts or it goes to the legislature,” Kovacic says. “But you can’t do it by yourself.”

#### Plan increases funding – it’s a virtuous cycle.

Evenett et al ’16 [Simon; July; Professor of International Trade and Economic Development, University of St. Gallen, Switzerland; Coordinator, Global Trade Alert; and a former nonresident Senior Fellow, Economic Studies, Brookings; Alexander Lehmann; German citizen, joined Bruegel in 2016 and is now a non-resident fellow. His work at Bruegel focuses on EU banking sectors and how private debt and non-performing loans can be addressed in the aftermath of recessions; Benn Steil; Senior Fellow and Director of International Economics at the Council on Foreign Relations; *Brookings,* “Antitrust Policy in An Evolving Global Marketplace,” <https://www.brookings.edu/wp-content/uploads/2016/07/antitrust_global_chapter.pdf>; KS]

Finally, holding constant factors such as the general level of economic activity and agency caseloads, there is a positive relationship between for- eign competition and funding for the Federal Trade Commission and the Antitrust Division of the Justice Department.\*® This would appear to indi- cate that antitrust, rather than being solely driven by consumer welfare con- siderations, is at the service of domestic firms adversely affected by imports. If trade stimulates antitrust, particularly targeted at foreign firms, the po- tential for direct conflict of laws and lobbying interests across borders can only grow as economic globalization progresses.

#### No resources for privacy – Green.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

\*\*\*Emory Ends\*\*\*

This reallocation of resources is especially timely because the FTC’s privacy responsibilities are expected to grow in the future. The FTC is already on its way to becoming a consumer protection agency primarily focused on privacy.262 In its 2019 budget request to Congress, over half of the agency’s budget was allocated to privacy.263 In addition, lawmakers on both sides of the political spectrum have proposed federal privacy legislation.264 Such legislation would expand the FTC’s jurisdiction, empower it to bring more privacy actions, and increase the demands on its privacy resources.265 Right now, the U.S. is one of the only Western countries that does not have a comprehensive federal privacy law.266 Public pressure is great from both industry and scholars to change that, which would lead to increased privacy action at the federal level.267 Moving the FTC’s antitrust duties to the DOJ would cleanly complete a readjusting of priorities that is already happening organically.

Removing its authority over competition law would also provide the FTC with organizational clarity. Currently, the agency serves dual missions of antitrust and consumer protection. Originally, the FTC only had antitrust jurisdiction: the FTC Act banned “unfair methods of competition in or affecting commerce.” 268 In 1931, the Supreme Court held that this did not include consumer protection.269 In 1938, Congress passed the Wheeler-Lea Act, which amended the FTC Act to cover “unfair or deceptive acts or practices.” 270 This paved the way for the FTC’s modern consumer protection mission.271 Since then, the agency has had to pursue goals that are sometimes in conflict

#### FTC fails.

Vittorio ’20 [Andrea; December 16; Reporter at Bloomberg Law; *Bloomberg Law,* “FTC’s Demand for Tech Company Data Shows ‘Underutilized’ Power,” <https://news.bloombergtax.com/privacy-and-data-security/ftcs-demand-for-tech-company-data-shows-underutilized-power>; KS]

Company Response

The nine tech companies could fight back by seeking to limit how much information must be handed over or by trying to quash the information orders in court, according to Van Loo. The companies have 45 days from the date they received the FTC orders to respond.

NetChoice, a trade association that represents companies including Amazon, Google, and Twitter, called the orders an arbitrary use of the FTC’s study authority.

“The Federal Trade Commission’s 6(b) orders are nothing more than a fishing expedition and a prime example of government overreach,” Carl Szabo, NetChoice’s vice president and general counsel, said in a statement Monday.

Szabo said agency orders have historically been used to study common practices across an industry. But the latest orders target “well-known but widely different businesses,” from online retailer Amazon to ByteDance Ltd.'s popular video streaming service TikTok.

The trade group’s comments echo those of FTC Commissioner Noah Phillips, who was the only one on the five-member agency to vote against issuing the information orders.

Phillips said in a statement Monday that the orders are too broad and intended to give “the appearance of action on a litany of gripes with technology companies.”

#### Ev lists proposals the FTC can’t do – Green.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

#### CFPB fills in.

Parker ’21 [Wilson; April 27; J.D. at the University of Virginia; Cov Financial Services, “Supreme Court Ruling Complicates FTC's Ability to Obtain Consumer Redress,” https://www.covfinancialservices.com/2021/04/supreme-court-ruling-complicates-ftcs-ability-to-obtain-consumer-redress/]

In the short term, this decision may also prompt the Consumer Financial Protection Bureau (“CFPB”) to be more assertive in areas where the two agencies share jurisdiction, such as regulating the debt collection industry. The CFPB has broad power to seek consumer relief. As long as the FTC’s ability to seek consumer relief is complicated by AMG Capital Management, the CFPB may take the lead in more cases where it can use its power to pursue consumer relief directly.

#### No impact.

**Naudé ’21** [Wim; 2021; Economics Professor at University College Cork, Ireland, Visiting Professor in Technology, Innovation, Marketing and Entrepreneurship at RWTH Aachen University, Germany; Economics of Innovation and New Technology, “Artificial intelligence: neither Utopian nor apocalyptic impacts soon,” vol. 30, no. 1]

5.1. An Abacus

A first point is whether or not the term artificial intelligence (AI) (introduced during an optimistic period in 1956) is perhaps a misnomer and should be ditched. As was explained, this narrow or domain-specific AI consists of **deep learning techniques**, using large volumes of data. This is **not intelligence**, even though the answers it can provide can be pretty impressive. It is rather the case that ‘**current and foreseeable smart technologies**have the **intelligence of an abacus**: that is, **zero**’ (Floridi 2018, p. 157). Some have more disparagingly described narrow AI as ‘**glorified statistics**’. A joke about AI making the rounds40 goes like this: ‘When you're fundraising, it's AI. When you're hiring, it's ML. When you're implementing, it's logistic regression '.

AI is however more than just glorified regression or optimization because of the ability of the software to get better by learning from data. Moreover, precisely how deep learning takes place and how predictions come about is an unknown. This black box quality of the results from deep learning could very well lead to the even slower diffusion of AI over time, for at least two reasons: one is due to given the tightening of regulations on data use, such as the GDPR in the EU41 and the European Commission's ethical guidelines for trustworthy AI, which includes the requirement of traceability and auditability of AI decisions (EC 2018). Another reason is the growing concern about the use of deep learning in science because results often cannot be adequately explained or replicated.42

5.2. The singularity can be cancelled

A second point (which is related to the first) is that an AGI is **remote**, placing hopes and speculations about a super-intelligence and Singularity in the realm of **science fiction** rather than **of fact**. The **core problem** is that scientists cannot replicate the human brain or human intelligence and consciousness because they do not fully **understand it** (Meese 2018). Penrose (1989) has (controversially) argued that **quantum physics** may be required to explain human consciousness. Koch (2012) provides a **rigorous criticism** from the point of biology of those claiming the **imminence** of a **singularity** or **super-intelligence**, stating that they do **not appreciate** the **complexity of living systems**. Dyson (2019) believes the future of computing is analogue (the human nervous system operates in analogue) and not digital. Allen and Greaves (2011) describe a ‘complexity brake’ applying to the invention of a super-intelligence, which refers to the fact that ‘As we go deeper and deeper in our understanding of natural systems, we typically find that we require more and more specialized knowledge […] although developments in AI might ultimately end up being the route to the singularity, again the complexity brake slows our rate of progress, and pushes the singularity considerably into the future '.

## FERC CP

### FERC CP – 1AR

#### 1 – No private rights of action or treble damages.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

A. Antitrust Laws and Agency Regulation

Antitrust laws are codified in the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.7 Antitrust actions can be brought by either private parties, the Department of Justice (DOJ), or the Federal Trade Commission (FTC).8 The Antitrust Division of DOJ may enforce the Sherman, Clayton, and Robinson-Patman Acts "through either civil or criminal prosecution.”9 The FTC is the "sole enforcer" of the Federal Trade Commission Act (unfair trade practices), and it also shares jurisdiction with DOJ over the civil provisions of the Clayton Act.10

For the purposes of this Article, I will only address the potential enforcement of federal antitrust laws by private parties. Under the court-developed doctrine of "primary jurisdiction," antitrust laws are preempted by the specific provision of a federal regulatory statute "when it is clear that enforcement of the antitrust laws would frustrate the specific regulatory scheme."11 As discussed below, the electricity market, which is the main subject of this study, is regulated by the Federal Power Act (FPA), which delegates to FERC the exclusive authority in reviewing and approving filed rates.12 Thus enforcement by either the DOJ or FTC would be contrary to the congressional scheme. However, private enforcement suits of antitrust laws are not preempted if the agency entrusted with evaluating the anticompetitive conduct is not engaged in "a full consideration of the consequences for competition," but rather engages in a "pro-forma" evaluation.13 It is the argument of this Article that FERC's inadequate review of filed market-based tariffs justifies judicial review of FERC's decision in the context of the private party antitrust claims.

The private enforcement suit is traditionally embraced by courts and is authorized by section 4 of the Clayton Act, which states that "any person . . . who has been injured in its 'business or property' by reason of an antitrust violation may sue to recover treble damages, costs of the suit, and attorney fees.”144 Section 4 of the Clayton Act authorizes private antitrust enforcement under "(1) sections 1, 2 and 3 of the Sherman Act, (2) section 2(a)-(f) of the Clayton Act (price discrimination), (3) section 3 of the Clayton Act (exclusive dealing and tying arrangements), (4) section 7 of the Clayton Act (merger), and (5) section 8 of the Clayton Act (interlocking directorates).”15 The scope of this Article is limited to antitrust laws that deal directly with prices, namely the Sherman Act sections 1 and 2, because the filed rate doctrine blocks antitrust suits predicated upon filed rates (i.e., the prices consumers pay).

Congress created modern antitrust law by passing the Sherman Act in 1890.16 The Act's purpose was to preserve "free trade and competition as fundamental components of American economic policy.”17 Section 1 of the Act prohibits combinations of restraints on trade, and section 2 prohibits monopolization.18 Courts have attempted to interpret the Sherman Act's broad statutory language.19 The Supreme Court held section 1 to apply to "unreasonable" restraints only.20 The Court defined the term "restraints" as "cartelization - agreements among competitors that possess market power, formed with the intent or that have the necessary tendency to restrict the output of the cartel members.”21

Compared to the regulatory response to anticompetitive behavior, the possibility of private enforcement of antitrust laws confers the advantages of both deterrence and considerable financial incentives for the successful plaintiff.22 Further, antitrust laws have the power to provide prospective and retroactive remedy to the injured parties, unlike a regulatory agency, which is limited by its legislative authority.23

#### 2 – No remedies.

Rossi ‘9 [Jim; November; Harry M. Walborsky Professor and Associate Dean of Research, Florida State University College of Law; *Administrative & Regulatory Law News*, “Why the Filed Rate Doctrine Should Not Imply Blanket Judicial Deference to Regulatory Agencies,” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319065>; KS]

As regulators implement competition policy for formerly rate-regulated services, judicial enforcement of remedies for market abuses based on violations of antitrust, tort and contract law can play an important role in protecting public welfare. While courts do not have the same degree of expertise that an agency possesses, courts do have some a comparative institutional competence in implementing enforcement regimes that could benefit competitive markets. Unlike regulatory agencies, courts do not depend on budget allocations or legislative delegations of specific regulatory jurisdiction. Courts have wider remedial authority and discovery powers than do regulatory agencies, and also have greater political independence.

Overbroad application of the filed rate doctrine is especially inappropriate where regulators have limited jurisdiction. For example, in 2004, a U.S. district court in Texas applied the filed rate doctrine to preclude antitrust claims for illegal conduct in deregulated wholesale power markets against numerous power supply companies. Texas Commercial Energy v. TXU Energy, Inc., 2004-2 Trade Cases ¶ 74,497, Util. L. Rep. ¶14,512 (S.D. Tex. 2004) (S.D. Tex., Corpus Christi 2004), affirmed 413 F.3d 503 (5th Cir. 2005). In declining to consider the merits of the antitrust claims, the court reasoned that the agency charged by the state legislature with overseeing the Texas electricity market, the Texas Public Utilities Commission (TPUC), possesses the “institutional competence to address rate-making issues in the [] market, one of the principles underlying the filed rate doctrine.” However, a regulator could only possess institutional competence if it also has the authority to act; at the time Texas had no express or implied private right of action for injured purchasers, and TPUC also lacked authority to order refunds and damages.

To the extent courts allow the mere filing of tariffs to presumptively determine whether a court will entertain the merits of claims of anticompetitive conduct, the filed rate doctrine invites even more radical deregulation than either Congress or the regulatory agencies accepting tariffs would prefer – that is, markets absent antitrust and common law remedies. Surely, Congress did not intend this in the Federal Power Act or in subsequent energy legislation. To the extent the filed rate doctrine privileges private choice over assessment of the public interest in choosing the mechanism for enforcement, courts should refuse to apply it automatically to preclude judicial enforcement.

#### 3 – Agencies lack experience and expertise.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

Despite current judicial deference, FERC's limited authority to impose penalties in deregulated markets, as well as its lack of expertise in competitive markets, makes FERC a poor institution to deter market power abuse and manipulation.247 Thus, unless Congress acts to expand FERC's legislative authority to impose meaningful penalties, the filed rate doctrine will continue to shield violators of the Sherman Act and conceal poorly made administrative decisions from judicial oversight.248 This legislative expansion of punitive authority, however, is unwise, because FERC does not have the much-needed expertise to police the newly deregulated and competitive markets, so the ability to punish effectively will only resolve part of the problem.249

#### 4 – Prefer comparative evidence.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Second, the full application of the antitrust laws, including through private enforcement, complements FERC market oversight and is necessary to ensure competitive market-based prices in gas and electricity. FERC’s oversight of these markets has important limitations and cannot be counted on to root out all collusive, exclusionary, and other unfair conduct or compensate purchasers harmed by such practices. The enforcement of the antitrust laws, including through lawsuits brought by injured consumers and businesses, is critical to ensuring that the market-based pricing of gas and electricity serves the public.

## FTC DA

#### There’s an aggressive signal of antitrust expansion now.

Sullivan ’12-3 [Mark; December 3; Senior Writer; Fast Company, “The FTC’s challenge to Nvidia/Arm deal may usher in a new era,” <https://www.fastcompany.com/90702665/ftc-antitrust-lina-khan>]

Subtitle begins:

The suit marks the FTC’s first big antitrust action under the leadership of antitrust firebrand Lina Khan. There could be lots more to come.

Subtitle ends, author and image omitted.

The Federal Trade Commission is [suing to block](https://www.nytimes.com/2021/12/02/technology/ftc-nvidia-arm-deal.html) the graphics chip maker Nvidia from acquiring the mobile chip design powerhouse Arm from its current owner, Softbank. The proposed merger, and the FTC’s case to block it, represent a number of firsts for the tech industry and its regulators.

The $40 billion merger, which was [announced in September](https://www.nytimes.com/2020/09/13/technology/nvidia-arm-softbank.html), is being called the largest in chip industry history. If approved, it would send seismic waves through that industry and position Nvidia as an essential technology provider to much of the rest of the industry, including its own competitors.

The case is the FTC’s first big antitrust action under the leadership of tech critic and antitrust firebrand Lina Khan. The 32-year-old Khan was nominated to the post of FTC chair by President Biden earlier this year after being a Congressional staffer and then an associate professor at Columbia law school. She has signaled an interest in the FTC taking a more aggressive stance toward big tech mergers.

On Khan’s watch the FTC has already (re)filed a [lawsuit](https://www.ftc.gov/news-events/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush) against Facebook over the social network’s past acquisitions, and is [currently investigating](https://www.fastcompany.com/90686812/lina-khan-ftc-chair-amazon-antitrust) Amazon’s market practices. Both Facebook and Amazon are [concerned enough](https://www.fastcompany.com/90655308/facebook-joins-amazon-in-trying-trying-to-sideline-ftc-chair-lina-khan) about Khan to request that she recuse herself from present and future actions against the companies.

The outcome of Nvidia case could be a big piece of her legacy. More importantly, the case may be the first major test for a new way of looking at antitrust.

Higher Bar for Mergers

Since the 1970’s U.S. courts have taken a very hands-off approach toward scrutinizing big mergers. The courts’ main litmus test for a merger is whether it raises or lowers prices for consumers. If it could be shown that prices in the near term wouldn’t go up, mergers tended to go through.

Khan and her team at the FTC see this as a narrow way of looking at a merger’s real effects. First of all, judging tech mergers based purely on price effects makes no sense because many tech companies such as Facebook (now Meta) and Google offer their services for free. Khan and other progressives believe competition among the companies in a given market is also very important to the welfare of consumers. The FTC worries that Nvidia’s merger with Arm may give the new company an advantage against others in the chip market–and an opportunity to raise chip prices later on.

If the FTC manages to block the merger, the case may usher in a tough new standard for getting tech mergers approved.

‘Switzerland’ No More

Arm has traditionally played a “Switzerland” role in the chip industry, licensing its technology to an array of companies, including Nvidia as well as Apple, Qualcomm, Samsung, Mediatek, and others. Given that Nvidia competes with many of the companies that are Arm’s customers, the FTC says that combining the companies would present a fundamental conflict of interest.

“This proposed deal would distort Arm’s incentives in chip markets and allow the combined firm to unfairly undermine Nvidia’s rivals,” said Holly Vedova, the director of the FTC’s competition bureau, in a statement.

The FTC’s complaint takes pains to make the connection between lacking competition in the chip markets with higher consumer prices. ” . . . the proposed merger would give Nvidia the ability and incentive to use its control of this [Arm] technology to undermine its competitors, reducing competition and ultimately resulting in reduced product quality, reduced innovation, higher prices, and less choice, harming the millions of Americans who benefit from Arm-based products,” the FTC says in a statement paraphrasing the language of the complaint.

Nvidia has seen tremendous growth from selling its graphics chips into data centers to run machine learnings applications. That growth put it in a position to buy Arm, and Arm-based CPUs also have a big and growing presence in data centers.

“The FTC’s lawsuit should send a strong signal that we will act aggressively to protect our critical infrastructure markets from illegal vertical mergers that have far-reaching and damaging effects on future innovations,” Vedova said.

#### Antitrust action now.

**Blumenthal ’12-2** [Paul; 2021; the Huffington Post, “Biden's Top Economic Advisers Say Antitrust Agenda Will Help Open Up U.S. Economic Growth,” https://www.huffpost.com/entry/biden-antitrust-national-economic-council\_n\_61a94effe4b0451e55136376]

He highlighted a number of administration policies in the works or already bearing fruit.

For example, two regulators are targeting anti-competitive practices in the supply chain, with the Federal Maritime Commission looking at shipping and the Surface Transportation Board monitoring freight rail. The FTC also launched an investigation Monday into supply chain disruptions and has asked large retailers to turn over internal documents.

The Department of Agriculture is investing $600 million to bring smaller meat processor businesses into the market to help address the industry consolidation that is squeezing ranchers and farmers and driving up meat prices for consumers. The administration also plans to engage in “more aggressive and proactive enforcement of the Packers and Stockyards Act,” Deese said, referring to a key 1920s law aimed at reducing concentration and anti-competitive behavior in the meatpacking industry.

“We are trying to attack the problem [of inflation] on both ends,” Ramamurti said, by promoting “more competition both by going at concentrations of power and by creating openings for competitors.”

The FTC also voted unanimously to enforce the right of consumers to repair the products they purchase themselves or through independent repair shops. This policy resulted in Apple and Microsoft opening the door to selling or giving replacement parts for their products to consumers. The administration is still looking for more success in bringing right-to-repair rules to medical devices and tractors, according to Ramamurti.

But these policies just scratch the surface of the administration’s antitrust agenda. The Justice Department is suing Google for anti-competitive behavior. The FTC is suing to break up Facebook and is investigating Amazon for antitrust violations. On Thursday, the FTC moved to block a merger between semiconductor companies Nvidia and ARM and killed a merger between two major outdoor sports shops.

#### Resource crunch now.

Swan ’21 [Betsy and Leah; July 6; Reporters; Politico, “FTC staffers told to back out of public appearances,” https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386]

"The FTC is severely under-resourced and in the midst of a massive surge in merger filings. This is an all-hands-on-deck moment,” Howard said in a statement to POLITICO. “So the agency pushed pause on public speaking events that aren't focused on educating consumers to ensure staff time is being used to maximum benefit and productivity. The American public needs this agency solving problems, not speaking on panels."

The FTC, which enforces antitrust and consumer protection laws, has about 1,100 staffers, fewer employees than the agency had at the beginning of the Reagan administration. Only about 40 of the agency's lawyers are devoted to privacy and data security issues, the agency's former chair told Congress in 2019, in contrast to the United Kingdom, which has an agency of roughly 500 employees focused on privacy.

As recently as December, the FTC was discussing steps to deal with a possible cash shortage including freezing pay and cutting back on the number of lawsuits the agency files.

#### They’re buckling under funding cuts.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

According to Revolving Door Project’s analysis, FTC appropriations have consistently declined since 2010, when the agency’s discretionary budget authority was $205 million. In the following years the number declined significantly from $205 million in FY 2010 to $180 in FY 2015 and $168 in FY 2019. Accounting for inflation, the decrease between FY 2010 and FY 2019 funding for the FTC amounted to a cut in discretionary appropriations of 30%.

Despite the decrease in discretionary funding, the agency has seen its overall budget increase slightly as a result of the increased merger filing fees that it receives. These are not enough to keep pace with the massive increase in caseload for the agency from which they result. As the fee schedule was implemented in 2001, the filing fees for mergers are far too low to cover the cost of the FTC’s investigations. In a 2021 statement on filing fees, acting Chair Rebecca Kelly Slaughter and Commissioner Rohit Chopra [stated](https://www.ftc.gov/system/files/documents/public_statements/1587163/p859910_concurring_statement_of_ac_slaughter_and_c_chopra_re_revised_hsr_thresholds.pdf) that the mega-mergers regulated by the agency “require more resources and staff. For example, large retail or service mergers often require investigation into dozens of geographic markets and large pharmaceutical or industrial mergers often require investigation into a dozen or more product markets.”

#### Both their caseload and costs are increasing.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

The Democratic commissioners specifically identify the need for experts to carry out investigations and litigation, noting “the amount of money the FTC spends on expert costs has risen dramatically over the last several years.” As new technologies are developed, the FTC’s investigations are bound to become more complex, necessitating higher funding altogether for hiring more technologists, economists and other experts. Although the FTC is known for an aversion to costly litigation (a fact which corporations use to their advantage), increased funding would also allow the agency to hire more attorneys to carry out challenges in court.

However, due to declining discretionary funding and fees not keeping up with inflation, the FTC has been forced to expend far fewer resources on each investigation than it had in prior years. The appearance of a budget increase since 2010 needs to be reconciled with the reality that the agency has been crushed under an increased caseload many times larger than the nominal increase in budget.

Our analysis also shows the declining budget coincided with stagnation in the number of full-time employees: from 2010 to 2019, the number of full-time employees of the FTC actually decreased by 31 from 1132 in FY 2010 to 1101 in FY 2019.

#### Employees and finances are in the tubes.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Hiring and retaining employees is another struggle for the beleaguered agency as they are forced to compete for attorneys with a private sector that offers ever higher salaries, particularly for young lawyers beginning their careers (oftentimes burdened by significant student loan debt). The FTC’s [2002 Congressional Budget Justification](https://www.ftc.gov/reports/fy-2002-congressional-justification-budget-summary) bemoaned the struggles the agency had  retaining “human capital” in the competitive labor market. The agency’s struggles were explained to Congress, saying the FTC “currently faces significant competitive pressures from the private sector, particularly for attorneys, economists, and information technology professionals with experience in mergers and Internet-related issues. For example, the compensation for first-year attorneys in the private sector is often three times higher than that available to most Government agencies.” Since the pay associated with FTC employment for attorneys and economists (the GS scale 11 or above) has not increased in keeping with inflation in the ensuing years, one can only assume the agency’s woes have grown since despite the struggles not being voiced so openly by FTC leadership. The lowest GS-11 pay grade in 2002 when adjusted for inflation, is almost 10% higher than the lowest GS-11 pay grade in 2021, a significant decrease in purchasing power for the entry level staff that was already susceptible to the higher wages offered in the private sector in 2002.

So, while HSR filings have been steadily climbing over the past 10 years, the FTC’s ability to regulate these filings has actually decreased because of a decline in agency funding and lack of competitive hiring. Without the resources to handle the increase in merger filings, the FTC has been compelled to reduce the number of enforcement actions it takes, [conserving staff resources](https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468) for only the most important cases. This has resulted in a decline in enforcement actions per merger by nearly half over a short nine year time frame, ultimately benefiting the monopolistic corporations that bolster their power by buying up other companies.

#### Resource-draining litigation is inevitable.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Progressives have been encouraged by President Biden’s choices of anti-monopoly leadership in Lina Khan, Tim Wu, and (potentially) Jonathan Kanter. But in the interregnum between personnel announcements and actual confirmations, corporations are getting as many [transactions](https://mattstoller.substack.com/p/is-biden-accidentally-giving-the) done now as possible. And while the Biden Administration seems on the precipice of reining in the power of Big Tech and other monopolists soon, the FTC, one of the two agencies charged with enforcing antitrust law, continues to be hobbled by chronic underfunding.

Since last year, the number of Hart Scott Rodino (HSR) premerger notifications — the program by which corporations alert the FTC and DOJ Antitrust Division they plan to merge — has [tripled](https://www.ftc.gov/enforcement/premerger-notification-program), with 266 filings this April compared to 79 filings last April. Recent mergers approved by the FTC, like AstraZeneca’s Alexion acquisition, have also encouraged a corporate buying spree. As [Matt Stoller](https://mattstoller.substack.com/p/is-biden-accidentally-giving-the) wrote, the FTC greenlit the $39 billion merger without a second request for information (meaning the agency took no action to even formally assess possible anticompetitive effects), causing investors to rejoice that “it’s business as usual in the merger world.” Wall Street Journal reporter Charley Grant [speculated](https://www.wsj.com/articles/post-covid-19-dont-forget-about-healthcare-stocks-11618830180) the AstraZeneca-Alexion merger shows changes in the enforcement “status quo seems unlikely in the near term, as the administration has focused on other priorities.”

#### Thumped.

Savitz ’21 [Eric and Max Cherney; August 20; Associate Editor and Technology Reporter; Barrons, “The White House Wants to Rein in Big Tech. Here’s How,” <https://www.barrons.com/articles/white-house-big-tech-51629428885>]

Antitrust Litigation

Some of the most ambitious efforts to curtail Big Tech’s power are already progressing through the court system. Federal and state regulators have filed suit against Alphabet and Facebook, with further litigation against Amazon.com and Apple likely in the coming months.

Investors should remember that litigation will not resolve quickly. Most of the current litigation is expected to take four to six years, with appeals extending the process by another five years or so, say antitrust lawyers. It may cost hundreds of millions of dollars in legal expenses, but stocks typically remain unscathed during the drawn-out process.