# Wiki Doc 4

## 1NC

### 1NC – Future Gens CP

#### The United States, using a strictly limited constitutional convention, should establish an independent, fourth body–comprised of randomly-selected representative samples of the population and experts, and that solicits petitions to challenge government action–of the United States federal government dedicated to protecting the interests of succeeding generations. The body should have exclusive authority to negotiate expanding the scope of its core antitrust laws to prohibit business practices by its private sector that violate the ethical principles of the Outer Space Treaty and bind the United States to its result. The amendment should be limited exclusively to this issue and no state should ratify proposals for additional constitutional changes on other issues.

#### The CP applies intergenerational equity to future generations – that’s better than trying to decide now whether the plan is beneficial across deep time

Butler 14 [Kaitlin Butler, Fragomen Risk Analysis Specialist. & Carolyn Raffensperger, On The Commons writer. “Economics As If Future Generations Mattered.” 10/23/14. https://www.onthecommons.org/magazine/economics-as-if-future-generations-mattered]

We have turned a corner on climate change-- a wrong turn-- and it is happening more rapidly than we have predicted. Climate change is already disrupting society, ecosystems, and national economies. We have altered so much of our Earth that we now threaten our own survival.

We know the catastrophic risks we are passing onto future generations and we wonder, with anxiety and grief, what will become of our planet. We ask ourselves, “what can I do?”.

One of the key barriers to taking action on the paramount issues of our time is that these problems are the end result of entrenched cultural, economic and social systems. The message that solutions to climate change and environmental degradation is up to the individual directly conflicts with what people are witnessing: the health and well-being of their bodies and their communities coming a distant second to powerful economic interests.

Current economic calculations do not recognize the full cost to the Commons – the cultural and natural heritage we share that is the foundation of our economy.

Yet growing numbers of people are waking up to the reemerging Commons ethic, which holds that human systems must be aligned to match ecological ones. People believe that future generations have the inalienable right to a healthy planet, and many are now seeking ways to withdraw their consent to the politics and policies that lead to a toxic future.

A rights-based approach to human systems like the economy allows us to open our discussion to questions like: What is the economy for? What are the principles needed to guarantee that we are fair to future generations? What tenets make justice and the protection of the Commons more likely?

#### Competition law is key – the counterplan is a starting point for consideration of future generations in policymaking

Teresa Thorp Dec 2013 [Senior Policy Planner at West Coast Regional Council, Former Head of Climate Law & Policy at Insight International; Researcher Environmental Law, Institute for Constitutional and Administrative Law, Centre for Environmental Law and Policy/Netherlands Institute for the Law of the Sea, Faculty of Law, Economics and Governance, Utrecht University, 43 Env. Pol’y & L. 6 “Future Generations - How Much Do We Owe Them?”]

On Deriving Consequential Legal Norms from First Principles

If the "ethnic cleansing" of future generations is now found to be unjust, and present and future generations are to be on the same plane, then consequential norms are, by extension, different. This is an area where new thinking and policy formulation is urgently required. Several ideas as to how appropriate instruments could unfold are set out below.

Competition policy is a potentially powerful discipline. Anti-trust tools could be used to "distribute" a dynamic package of first principles and consequential norms fairly. Competition law and policy could also help to find the right balance between distributing costs and benefits across "present and future generations".

This suggestion stems from the assumption that present generations are a special type of natural monopoly. Three examples illustrate this idea. First, present generations have an overwhelmingly dominant advantage in their access/ability to make decisions about and affecting future generations. Certain decisions may be open to potential abuse. Second, many initiatives that aim to reduce greenhouse-gas emissions are scheduled over inter- generational horizons and have an impact on large-scale infrastructure projects, such as water, electricity and gas pipelines. Third, investment is not necessarily recoverable if a present generation firm goes out of business.

If present and future generations are to be treated equitably, and governed on the same plane, then the free market may not be the ideal mechanism. Regulatory intervention could be the trigger. There are arguments for and against this approach. On the one hand, trying to increase competition by encouraging a place for future generations creates a potential efficiency loss to society. On the other hand, there could be an argument for a type of "equitable efficiency" or "first-principles efficiency" that exists when a dynamic first-principles approach is used to produce an extra unit, in the form of a "duty to protect" humankind.

#### Imbuing elected branches with authority grants decision-making authority to present populations – that trades off with future generations – only the cp solves

Tremmel 13 [Joerg Chet Tremmel is a Professor for "intergenerationally just policies" at the University of Tuebingen. He is Editor-in-chief of the Intergenerational Justice Review and a visiting lecturer at the Johann-Wolfgang-Goethe-University Frankfurt, the University of Stuttgart and the Heinrich-Heine-University in Dusseldorf, Germany. An extended separation of powers model as the theoretical basis for the representation of future generations. July 26, 2013. https://www.futurejustice.org/wp-content/uploads/2013/11/Paper\_Future-Branch\_Tremmel.pdf]

And rightly so. The absence of representation of future generations means that conflicts of interest are decided by the majority of eligible voters, not the majority of those affected by the decision. Future people that are relevantly affected by a decision don’t have any influence over it. This ‘representation gap’ is fundamentally different from deficiencies in the participatory rights of other social minorities or interest groups for which representation is also lacking (e.g. women, the elderly, or foreigners). These groups are present here and now; they can take part in political discourse, write opinion-editorials, appear on talk-shows and in many cases participate in elections. None of these options are available to future generations. “The future is another country”, states Posner,8 paraphrasing that the welfare of future generations is as low on the agenda of political incumbents as the welfare of a foreign country.

If future citizens could assert their interests in the political decision-making process, majority outcomes in important political decisions of the present would be different. Energy policy is a good example: Energy production of present generations, which relies heavily on fossil fuels, provides a high standard of living today, but at the expense of creating serious disadvantages for the medium-term future of fifty to a hundred years. Post-1990 - the year in which the IPCC’s First Assessment Report assessed a connection between anthropogenic carbon dioxide emissions and climate change with a 90 per cent probability- presently living generations can no longer legitimately claim ignorance of the consequences of their actions. Scientific analyses indicate that current energy policy intensifies the natural greenhouse effect and causes the global average temperature to rise.9 Let’s assume that the future individuals born in the next 200 years could partake in the next general election, in the present. The consequence would be that all parties would rewrite their official party positions on today’s energy policy and implement a much more rapid decline in carbon dioxide emissions. The same effect could be achieved if a future branch were implemented in the set-up of democracies as a fourth power in the separation of powers model.

Especially with regard to environmental matters, the effects of current actions extend far into the future and have the potential to seriously negatively influence the quality of life of numerous future generations, as figure 1 shows.10

In light of these facts, a prolongation of the legislative session seems appropriate. However, election periods cannot even come close to corresponding to the time span in which the effects of political decisions are felt without restricting voters’ influence in such a way that would endanger the very essence of democracy.

Problems posed by the short-sightedness of democracies are not limited to ecological issues. Long before the emergence of modern environmental movements, excessive national debts were considered a prime example of carelessness with regard to the future. As early as 1816 Thomas Jefferson discussed potential solutions to this problem.11 Insufficient investments in education or failing to adjust pay-as-you-go social security systems are further examples of lacking long-term orientation in political systems.

Modern democracies are either direct democracies (prime example: Switzerland) or organised according to the principle of representation. Both democratic forms are legitimate; the principle of representation is therefore neither an essential element of democracy nor does it contradict it. In this respect, democratic principles do not oppose an extension of the principle of representation to cover future people. The representation of future people is thus compatible with democratic principles. As Gohler notes, “In the broadest sense of the term, representation means to make something invisible visible and something absent present’’.12 Thaa adds that representation should be understood as “the visualisation of an absentee".13 Although this phrase may have been coined in a different context, it cannot be better expressed.

Lack of liability for inadequate performance in office

An additional issue amplifies this orientation to the present: In democracies, politicians’ governmental responsibility is for a limited amount of time. Indeed, this is one of the advantages of this system of government. However, it also means that an elected official does not have to assume that his own shortsighted decisions will catch up with [them] him twenty or thirty years later. As soon as a new government comes into power, she is no longer liable.

#### Discounting future generations causes extinction – only formalizing a mechanism to weight their concerns solves

Jones et al 18 [Natalie Jones, Mark O'Brien, and Thomas Ryan, University of Cambridge, United Kingdom. Representation of future generations in United Kingdom policy-making. Futures Volume 102, September 2018, Pages 153-163. https://www.sciencedirect.com/science/article/pii/S0016328717301179#sec0005]

Global catastrophic and existential risks pose central challenges for intergenerational justice and the structure of our current democracy. The Global Challenges Report 2016 defines global catastrophic risk as risk of an ‘event or process that, were it to occur, would end the lives of approximately 10% or more of the global population, or do comparable damage’ (Global Challenges Foundation & Global Priorities Project, 2016). A subset of catastrophic risks are ‘existential’ risks, which would end human civilisation or lead to the extinction of humanity (Global Challenges Foundation & Global Priorities Project, 2016). Catastrophic and existential risks may be categorised in terms of ongoing risks, which could potentially occur in any given year (e.g. nuclear war; pandemics), versus emerging risks which may be unlikely today but will become significantly more likely in the future (e.g. catastrophic climate change; risks stemming from emerging technologies). Ongoing risks have existed for some time now and are generally well-understood. However, emerging risks, particularly those arising from technological developments, are less understood and demand increasing attention from scientists and policymakers. These technological developments include advances in synthetic biology, geoengineering, distributed manufacturing and artificial intelligence (AI) (Global Priorities Project, Future of Humanity Institute, Oxford Martin School, Centre for the Study of Existential Risk, 2014). Although the impact of these technologies is still very uncertain, expert estimates suggest a non-negligible probability of catastrophic harm.

In this article we rely on two main premises. The first is that future generations are under-represented in current political structures partly due to political ‘short-termism’ or ‘presentism’ (Thompson, 2010). Governments primarily focus on short-term concerns, which mean that they may systematically neglect global catastrophic risks and, accordingly, future generations (Global Priorities Project et al., 2014). The problem of presentism transcends political divisions: people across the political spectrum are concerned about its effects, and should care about mitigating global catastrophic risks. This situation is exacerbated in that the good of mitigating global catastrophic and existential risks is typically global. Individual political actors (even whole countries) bear many costs in providing for such goods, whereas the benefits are dispersed globally. In addition to the benefits of mitigating existential risks being global, many of the beneficiaries are future people who do not exist presently and as such have no voice in the political process. There is a clear lack of incentives to mitigate such risks, and market failure should be expected (Beckstead, 2013).

The second key assumption is that we as a society consider the rights and interests of future generations to be important. It is beyond the scope of this paper to present a complete account of the philosophical arguments on this matter. It is sufficient to note that although significant philosophical problems have been pointed out, chiefly due to the fact that the actions of present people have a causal impact on the values, number and identity of future individuals (Parfit, 1984), there are several theories of intergenerational justice that may support this assumption (Gosseries, 2008).

The need to include explicit pathways in governance structures for accountability to the rights and needs of future generations has been noted (Global Priorities Project et al., 2014). Some thought has been put into how future generations may be represented in relation to environmental risks such as climate change, resource depletion and biodiversity loss; this research is reflected in the sustainable development literature (Brown Weiss, 1990). However, this problem has not been explored in relation to society’s burgeoning awareness of technology-related catastrophic and existential risks. In addition, such pathways have not been fully explored in the United Kingdom (UK) context. This policy paper hopes to fill this gap in the literature.

### 1NC – States CP

#### The 50 states and relevant sub-federal entities should expand the scope of its core antitrust laws to prohibit business practices by its private sector that violate the ethical principles of the Outer Space Treaty

#### The United States federal government should not preempt it.

### 1NC – Regs CP

#### The United States federal government should establish and enforce regulations that curtail business practices by its private sector that violate the ethical principles of the Outer Space Treaty

Establish rules of the road for space traffic management

#### Solves best

Wu 17 [Tim Wu, legal scholar and professor of law at Columbia University. Also is now official in the Biden White House with responsibility for Technology and Competition policy. “Antitrust via Rulemaking: Competition Catalysts.” 2017. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3057&context=faculty\_scholarship]

In its March 26, 2016 issue, The Economist magazine announced that “America needs a giant dose of competition.”1 Its study of industry concentration and profits suggested that, after decades of consolidation, competition had decreased across a broad range of the American economy.2 An April 2016 issue brief by the Council of Economic Advisors reached similar conclusions, stating that “competition appears to be declining” due to “increasing industry concentration, increasing rents accruing to a few firms, and lower levels of firm entry and labor market mobility.”3

The promotion of competition in the American economy is a task that has traditionally fallen to the enforcement agencies at the federal and state level, relying on the main antitrust statutes. 4 However, the challenge of declining competition has also prompted interest in the use of regulatory alternatives to antitrust to “catalyze” competition.5 The strategy involves using industry-specific statutes, rulemakings, or other tools of the regulatory state to achieve the traditional competition goals associated with the antitrust laws.6 Hence, “antitrust via rulemaking.”

While conducting competition policy outside of the main antitrust laws is not entirely new, it came into some prominence through an April 15, 2016 Executive Order issued by the White House.7 In that order, the President charged the executive agencies as follows:

Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

In the field of administrative law, there is a longstanding debate over the relative merits of rulemaking and adjudication.9 Beginning in the 1960s there was a decisive shift among most agencies toward rulemaking. 10 However, with exceptions (most of which are described here), the promotion of competition – the antitrust regime – remains rooted in an adjudication model, and might even be described as stuck there. More effective and widespread promotion of competition may require more widespread and effective use of pro-competitive rulemaking by a broader variety of agencies.

### 1NC – Core PIC

Congress should amend the 1936 Commodities Exchange Act (CEA) to “prohibit any person who causes (or attempts to cause) unreasonable restraints of trade or material anticompetitive burdens in the markets for derivatives.”

#### Solves – Cal inserts yellow

Rhimbassen and Rapp, 21 (Maria Lucas Rhimbassen and Lucien Rapp, Research Fellow with Open Lunar & PhD Candidate in Space Law at the University of Toulouse and CNES. Member of the IISL and an associate member of the ABA Committee on Space Law, Professor Rapp is one of the French leading experts on international business law and international regulatory matters, with a focus on ICT, 6-25-2021, accessed on 10-8-2021, Emerald, "New space property age: at the crossroads of space commons, commodities and competition | Emerald Insight", <https://www.emerald.com/insight/content/doi/10.1108/JPPEL-02-2021-0007/full/html>)//Babcii

. Competition law New technologies, globalization and deregulation helped competition law to make its way into the derivatives industry, to compensate for decreasing agency oversight because of a long tradition of jurisprudence in that sense (Weinstein, 2019). The US Commodities Futures Modernization Act (CMFA) of 2000 both deregulated to a certain extent the derivate market while opening the door to antitrust measures (Falvey, 2006) as shown here: ANTITRUST CONSIDERATIONS. – Unless necessary or appropriate to achieve the purposes of this Act: [a] board of trade shall endeavor to avoid – (A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden in trading on the contract market. Indeed, increasing competitive market dynamics and commodity exchanges call for antitrust enforcement; however, it remains unclear as to how this will happen and to what degree. Nonetheless, the Commodities Futures Trade Commission (CFTC), created in 1974, provided for some antitrust authority vs anti-competitive conduct via its “antitrust considerations” within the 2010 Dodd-Frank Act [19] as is explained below, to help break collusive behavior and cartelization of the oligopolistic derivatives market in the highly increasing concentrated financial sector [20]: One of Dodd-Frank’s central goals was to ensure that most derivatives transactions are centrally cleared (thereby reducing systemic risk) and traded on exchanges (reducing pricing opacity and promoting competition). The increased significance of derivatives clearinghouses and exchanges in the Dodd-Frank regulatory scheme raises the danger that firms controlling these entities could exclude derivatives-trading rivals who need access to complete their swaps. Such conduct could lead to reduced competition and higher prices in derivatives trading. Big-bank control of clearinghouses and exchanges also may give those firms the opportunity to manipulate the types of derivatives contracts that are exchange traded and centrally cleared, pushing certain contracts into the over-the-counter markets where the banks can charge higher prices. To the extent central clearing of derivatives trades reduces systemic risk (the key premise of Dodd-Frank’s derivatives reforms), this outcome may threaten systemic soundness. Despite these risks, antitrust immunity may **shield such conduct from attack, leaving sector regulators as the only bulwark against anticompetitive activity** in these markets (Weinstein, 2019, p. 6). This **measure proved inefficient**, as it did not cover a major loophole (swap dealers [21]) and its reach was rather **limited**. Therefore, it is argued that **the scope of the antitrust considerations should be broadened** by Congress by amending the 1936 Commodities Exchange Act (CEA) – amended several times since [22] – to “prohibit any person who causes (or attempts to cause) unreasonable restraints of trade or material anticompetitive burdens in the markets for derivatives.” This amendment should also prohibit both in-house and inter-Exchanges anti-competitive and anti-ethical behavior such as unfair competition and derivatives price-fixing conspiracies (Scopino, 2016). Weinstein concludes in that sense: Concentration appears to be increasing in the financial sector and the broader economy. In this context, the Supreme Court’s restrictions on antitrust enforcement in regulated markets are especially concerning. This concern is heightened by evidence that **sector regulators generally are poorly suited to protecting competition and reluctant to take on that job.** This Article has proposed a regulatory-design solution to the challenge of protecting competition in regulated markets. Structural regulation of potential competitive bottlenecks can adequately preserve competition while allowing **sector regulators to focus on their core missions**. When executed properly, this approach may be **superior to active sector-regulator competition enforcement** and even to traditional antitrust enforcement (Weinstein, 2019, p. 59). For this reason, **antitrust has the potential for further regulatory impact** and reach in the commodities sector and we posit that this could be extrapolated to space in a more complex fashion, as space is a peculiarly vast and complex domain, as has been shown throughout this paper. 10. Space antitrust In the light of the previous section, this paper argues that space antitrust could provide for both a pragmatic and efficient manner to contain the volatile forces of a space commodities market, as explained supra. Centralized global space governance is a vast, multi-generational project, presumably in the works and a manifestation of its shapes has yet to appear. In the meantime, however, alternate methods must be investigated. Decentralized models are surfacing from a bottom-up approach and polycentricity is emerging organically. How these polycentric forces will interact, compete, cooperate and evolve can be facilitated by a **“space” antitrust framework based on the OST principles**, which cover interactions relevant to an ethical “space antitrust” and sustainable space ecosystem. These principles, which all have an incidence on competition, are benefit sharing, equality of access, non- discrimination, non-harmful interference, due regard, cooperation and fair competition. Future analysis as to their incidence is necessary to determine their interaction with an antitrust framework and how these interactions are to be governed. Polycentricity is timely given the complexities of systems of systems in space. It could successfully work for hand in hand with space antitrust to ensure that the transnational lex mercatoria and the commoditization of the space market do not collide with the higher ethical principles, which international space law relied on for half a century. 11. Discussion Traditionally, international space law, as opposed to national space law, is not equipped to deal directly with the private sector. However, antitrust has the tools to do so. The broader range of space antitrust might help delve further down into the elusive and transnational commercial law, which is likely to accelerate in the near future and multiply interest around the commodification of the space market. As suggested throughout this paper, **space concentration, leading to monopolies, is a likely outcome** of the further development of space commerce. To mitigate the risks of monopolization, collusive and of other anti-competitive behavior, especially when considering the particular nature of space resources, to be exchanged on the emerging space-based market – including the complex and specialized services attendant thereto – special ethical and legal safeguards must be put in place to incentivize competition while containing the risks of fragmentation mentioned previously. This is important to enable a healthy expansion of the ecosystem. Our emphasis on the market forces at play is rooted in the assumption that through the observation of the current trends of commercialization and of the growing number of non-traditional actors (either public or private) stemming from old and from new space-faring nations, it is easier to anticipate risk and to provide supporting regulatory proposals. Our suggested approach toward an adaptive and polycentric governance model attempts to resolve some of these challenges, by allowing for a bottom-up framework that fosters commercialization, to surface organically, from the players, with minimal outside intervention. Our goal is to prevent the risk of privatization and commercialization that might gradually erode the ethical principles of international space law. To use the analogy of the carrot and the stick in striking a balance between regulatory intervention and free initiative, we prefer the **carrot** approach. Incentivizing the **private sector** to compete around ethically balanced markets has the potential to unlock new and unforeseen forces of antitrust in space to channel the fragmentation of forces in a sustainable manner while ensuring the respect of the conventional set of ethical principles to which many corporations already subscribe to in the context of their corporate compliance programs. Here we would an additional layer of space law higher ethical principles (such as enumerated supra) and investigate into further incentivizing soft law implementations. These higher principles are rooted in system interconnectivity and complexity, and have direct consequences on life, **planetary protection, environmental aspects, intergenerational equity**, etc. In approaching these issues through the angle of antitrust, we argue that **antitrust is bound to evolve and to adapt**, both in Space and on Earth. Furthermore**, a broad space antitrust scope** might also benefit from polycentric governance when concrete self-determination claims would manifest, such as Elon Musk’s self-governing principles on Mars. Any future space colonies (or settlements) would either rely on their own resources or would depend on the import and the export of resources, and therefore, on resource commodification. It then follows that having an ethical space antitrust regime well in place appears as a foreseeable necessity. An ethical space antitrust should also consider non-market factors such as the potential new rights granted to specific resources and regulate accordingly (e.g. the equivalent in space of legal rights to natural resources, etc.). Without such an ethical regime framework harnessing uncoordinated competitive forces, one possible outcome would be the **dystopia** described by Andy Weir’ Artemis economy on the Moon based on “soft landing grams” credits directly applied to one’s consumption of oxygen. A bleak perspective. Finally, antitrust is an adequate response to space property and resources, as property law is, at its basis, domestic law and so is competition law. They can evolve in parallel in the space sector and merge into an **international framework**, adapted to the international space law forum. There is no internationally harmonized antitrust framework as of this writing, except non-binding UN guidelines. Perhaps, a “**space antitrust**” would help bridge that gap and contribute to **reducing growing issues such as “forum shopping,” fragmentation and “conflict of laws.”** 12. Limitations and further research While this paper is at the exploratory level, further research is necessary in determining the scope of antitrust in space, property and commodities and how ethics can play a role specifically, at the implementation level. Case studies should be conducted with a clear methodology. Moreover, the research must include other financial aspects such as spacebased assets and securities, notably the Space Assets Protocol of the UNIDROIT Cape Town Convention. Finally, more work must be done in terms of international/transnational recommendations for antitrust, as there is no internationally harmonized antitrust governance or regime and it remains heavily politicized – or not enough, depending on the school of thought (Teachout, 2020, p. 212). 13. Conclusion This paper explored a roadmap into managing fragmentation triggered by the accelerated development of the outer space ecosystem and the rise in non-traditional space actors, be they public or private. **International space law no longer suffices to cope with all the new actors**, and therefore, transnational alternates are recommended. This paper recommends a transformed antitrust regime, adapted to space, based on the corpus juris spatialis ethics. This could help preventing the risk of space law erosion while privatization and commercialization of space are trending and potentially leading to the commodification of the space market and ecosystem, while space lawyers are still debating internationally as per the principle of non-appropriation and as per what a “space object” should consist of and what property rights could be applicable in space. An interdisciplinary approach could prove very helpful to address this problem. For instance, E. Ostrom’s work on classifying the goods into four categories from an economic standpoint might help space lawyers into classifying space goods once and for all and this could serve as a catalyst for polycentric space governance, governed inter alia, by competing forces. However, these competing forces should rather be seen as the dark matter in a space ecosystem, enabling sustainable synergies and interactions, with intergenerational equity in mind. This would be essential to avoid unregulated speculation based on space commodities, which could prove to be more detrimental in such an extreme environment as space. For instance, speculation benefits from climate change impact on crops and other commodities on Earth. We are all too familiar with the consequences. Imagine what space weather-based speculation could do in space. It could obliterate entire economies at once. One could argue that either space antitrust monitors the space commoditization closely, either space derivatives should be significantly regulated.

### 1NC – FTC DA

Tradeoff DA:

#### The FTC has shifted from tech mergers to gas consolidation---that solves energy concentration and hikes.

Botts ‘9/1/21 [Baker Botts is an international law firm of approximately 700 lawyers practicing throughout a network of 13 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the technology, energy, and life sciences sectors. "FTC Chair Turns Antitrust Attention to Energy Industry." https://www.bakerbotts.com/thought-leadership/publications/2021/september/ftc-chair-turns-antitrust-attention-to-energy-industry]

For the energy sector, one silver lining of the increasingly aggressive rhetoric from antitrust regulators has been their singular focus on “big tech.” It seemed, for a time, that oil & gas had finally abdicated its long-held position as the industry most likely to be on the receiving end of heightened antitrust scrutiny. Any such hope evaporated last week, when Lina Khan, the new chair of the Federal Trade Commission, sent a letter to the White House, making clear that she has the energy industry squarely within her sights.

This renewed focus on the energy industry comes at an already sensitive time. If gas prices rise in the wake of Ida, there will be loud calls for an investigation, as was the case after Hurricanes Katrina and Rita in 2005. Similar to those storms, Ida amounted to a direct hit on the industry, barreling through the Gulf Coast and Louisiana, leaving more than 1 million without power. While it remains to be seen what will ultimately happen with fuel prices, there were already calls for an investigation after prices rose through the summer, even before the hurricane was on the horizon.

I. Ms. Khan’s Letter

The letter, sent on August 25, came in response to a request from Brian Deese, Director of the National Economic Council, for the FTC to investigate elevated gas prices. In his August 11 letter, Deese noted, “During this summer driving season, there have been divergences between oil prices and the cost of gasoline at the pump.” He asked the FTC to investigate. Khan’s response went far beyond Deese’s straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry.

First, Khan stated, she plans to “identify additional legal theories” to challenge retail fuel station mergers “where dominant players are buying up family-run businesses.” This remarkably specific initiative, possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations.

Second, Khan indicated she would be “taking steps to deter unlawful mergers in the oil and gas industry.” While she again made clear that she is focused on retail fuel deals, she clearly left the door open for a broader industry focus. Specifically, Khan referred to a July decision to rescind a prior FTC policy that limited requirements for parties to any merger ultimately deemed unlawful to obtain prior approval from the agency for any future transactions. In her letter from last week, Khan stated: “we will impose ‘prior approval’ requirements to deter those who propose illegal mergers, including in retail gas markets.”

Finally, Khan wrote that she “will be asking our staff to investigate abuses in the franchise market.” She hypothesized that “large national chains” might be forcing their “franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” Khan then signed off, stating, “I will continue to assess how the FTC can use its tools to police unlawful business practices in oil and gas markets.”

All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct.

II. Pricing Investigations

Whether triggered by Hurricane Ida or by letters from concerned officials such as Mr. Deese, any FTC gas pricing investigation would bring significant discovery burdens for industry participants. The post-Katrina report, released in May 2006, explained: “Since August 2005, the Commission has expended substantial resources on this investigation, including the full-time commitment of a significant number of attorneys, economists, financial analysts, paralegals, research analysts, and other support personnel with specialized expertise in the petroleum industry.” Specifically, FTC staff conducted 65 interviews, issued 139 Civil Investigative Demands (similar to subpoenas), and 99 orders seeking profitability and tax expenditure information. Staff identified more than 105 retailers accused of price gouging.

Despite the deep dive, the Commission uncovered very little evidence of wrongdoing. While finding that seven refiners, two wholesalers, and 24 single-location retailers had higher average gasoline prices that were not substantially attributable to higher costs during the relevant period, the report ultimately concluded: “additional analysis…showed that other factors, such as regional or local market trends, appeared to explain the pricing of these firms in nearly all cases.”

This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation. Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden’s antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny.

#### The plan causes case cutting---it overburdens the agency.

Hoofnagle, et al, 19—Adjunct Professor of Information and Law, University of California, Berkeley (Chris, with Woodrow Hartzog, Professor of Law and Computer Science, Northeastern University, and Daniel J. Solove, John Marshall Harlan Research Professor of Law, George Washington University Law School, “The FTC can rise to the privacy challenge, but not without help from Congress,” <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>, dml)

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

#### Extinction.

Koranyi ’16 [David; 2016; Chief Advisor of City Diplomacy for the Mayor of Budapest, former Director of the Atlantic Council's Eurasian Energy Futures Initiative; Atlantic Council Strategy Paper, “A US Strategy for Sustainable Energy Security,” <https://espas.secure.europarl.europa.eu/orbis/sites/default/files/generated/document/en/AC_SP_Energy.pdf>]

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance.

It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets.

Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement.

As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors.

Conclusion

The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60

Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

### 1NC – Biz Con DA

#### Growth up – businesses are confident

Minikoff 12/31 [Yoel Minikoff, Seeking Alpha News Editor. “Will the U.S. economic recovery continue into 2022?” 12/31/21. https://seekingalpha.com/news/3784335-will-the-us-economic-recovery-continue-into-2022]

Opportunity: The Conference Board, a non-profit research group of more than 1,000 public and private corporations, still forecasts that the U.S. economy will grow by 3.5% in 2022. Take for example the solid growth seen last quarter, despite a rise in coronavirus cases across the U.S., as well as a solid season of corporate earnings. There is also the trend for each successive wave of COVID-19 to having a smaller impact on the economy, while consumers are keeping up robust spending amid improving labor market conditions.

"Supported by the expectation of continued healthy financial market conditions, increased production to restock lean inventories, further gains in the consumption of services as consumer and business travel picks up, and a resilient housing market, continued above-trend growth is likely GDP growth in 2022," read a forecast from Kevin Kliesen, economist at the Federal Reserve Bank of St. Louis. "At this point, the most probable outcome is 3% to 4% real."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Decline cascades---nuclear war.

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

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

### 1NC – Politics DA

#### FY 22 appropriations will pass now if Congress maintains bipartisanship—otherwise, yearlong CR ruins defense industrial base and military modernization

Gould 1/21 [Joe Gould is senior Pentagon reporter for Defense News, “Defense industry frets as funding talks crawl”, 1/21/2022, https://www.defensenews.com/congress/budget/2022/01/21/defense-industry-frets-as-funding-talks-crawl/]

Despite repeated warnings from uniformed Pentagon leaders and lawmakers of both parties that a full-year continuing resolution will hurt national security, some defense industry advocates are still worried about an impasse.

On Thursday, both chambers of Congress left town on recess until the week of Jan. 31, after making scant progress on a deal for an omnibus federal spending package. Amid partisan divisions over funding levels and policy provisions, House Speaker Nancy Pelosi, D-N.Y., warned that a full-year CR would create a national security crisis ― in an effort to pressure Republicans.

“It is a national security issue of the highest priority, with the threats that exist out there. To go to a continuing resolution instead of a decision-making omnibus bill is to weaken our security and our stability,” Pelosi told reporters Thursday. “The Republicans should know that, so we hope we will be able to bring that legislation to the floor before [the current CR] expires.”

With fiscal 2022 spending bills four months overdue, lawmakers and the Pentagon have warned against a yearlong CR that would freeze defense spending at the level of 2021 appropriations. CRs continue funding at the previous year’s level, preventing the Pentagon from starting new acquisition programs and ramping up production quantities.

And without a 2022 spending deal to set a new baseline, the president’s budget submission is in limbo and expected to come months late, which is sowing uncertainty for the military and its vendors.

President Joe Biden signed a defense policy bill that boosts his $753 billion national defense budget request for FY22 to $778 billion, a 3% increase. But Republicans have said they want more for defense, less than the 16% increase proposed by Democrats and an agreement on some politically charged policy riders.

By the reckoning of National Defense Industrial Association Chairman Arnold Punaro, lawmakers could meet somewhere in the middle with 8% increases for both defense and nondefense, but that’s far from a certainty. Democrats have raised fears some Republicans see budget gridlock as an advantage heading into midterm elections and don’t want a deal at all.

“We’re still in budget chaos,” Punaro told Defense News this week. “China’s on the march, Russia’s on the move and North Korea’s on the advance, and yet Congress is sitting on their duff, not passing a spending bill. It’s disgraceful.”

The lack of a 2022 deal as a baseline for defense amid escalating inflation presents a huge challenge for Pentagon planners crafting the FY23 budget request, Punaro said. He worried the administration could make a flat budget request, potentially costing the Pentagon billions of dollars in buying power.

Meanwhile, a full-year CR would yield $11 billion of lost growth, while 7% inflation would mean another $50 billion in lost buying power, according to defense consultant Jim McAleese, the founder of McAleese & Associates.

Though the current CR runs out on Feb. 18., recent negotiations in Congress have sparked some optimism.

Lead appropriators in the Senate met Jan. 13 with Senate Majority Leader Chuck Schumer and Senate Minority Leader Mitch McConnell to set the guidelines for negotiations. From there, lead House and Senate appropriators met to kick off talks, and Pelosi has said she’s been in discussions with House Appropriations Committee Chairwoman Rosa DeLauro, D-Conn.

Asked Thursday whether it’s realistic to get an agreement by Feb. 18, as Congress was about to leave town Senate Appropriations Committee Vice Chairman Richard Shelby, R-Ala., said: “That’s a good question. It’d be hard to get it by the 18th, but if we can make huge progress, we can probably get done soon.”

It’s unclear whether looming international crises with Russia and Ukraine, China and Taiwan, and North Korean missile tests would add pressure to pass defense spending. When asked about Pelosi’s comments, Shelby seemed to dig in.

“She’s right on that, but to underfund defense as some people would like to do, that would be a bigger challenge,” he said.

At a House Appropriations Committee hearing Jan. 12 about the effects of a potential full-year CR, the top officers of the Army, Navy, Air Force, Marine Corps and Space Force warned such a move would sabotage the military’s efforts to compete with China by stalling new weapons like hypersonic missiles.

“CRs effectively prevent modernization at speed,” said Marine Corps Commandant Gen. David Berger. “We actually stand to be outpaced by China — not because of their speed but because of our failure to comply with our own budgetary processes.”

The president and CEO of the Aerospace Industries Association, Eric Fanning, has warned that budget unpredictability is inefficient for the defense industry, which has to idle while the Pentagon waits for its projects to be funded. Amid the Capitol Hill activity, Fanning said he is “hopeful that the momentum continues.”

“The hearing painted a concerning picture of additional and unnecessary costs, as well risks to capabilities and to the industrial base in the short and long-terms. There was bipartisan agreement on how devastating a year-long CR could be,” Fanning said in a statement Thursday. “Over the last few days, there are positive signs that the message is getting through and the top appropriators from both parties are coming to the table.”

Lead Pentagon officials have talked for years about the need to harness the innovation of small tech firms. But CRs stifle those efforts, an executive at one of those firms, Anduril Industries, wrote in an essay this week.

#### Antitrust ruins bipart—Republicans link it to other partisan disputes

Ghaffary 20 [Shirin Ghaffary, "Republicans showed why Congress won’t regulate the internet", 7/29/20, https://www.vox.com/recode/2020/7/29/21347128/big-tech-antitrust-hearing-facebook-zuckerberg-amazon-bezos-apple-cook-google-pichai]

Allegations that social media platforms have an anti-conservative bias has for years been a rallying cry of President Trump and the Republican party. And leading up to Wednesday, Republicans attacked the focus of the Democrat-run House Judiciary subcommittee hearing — calling on it to focus more on anti-conservative bias and for Twitter CEO Jack Dorsey to appear. Twitter is a small company compared to, say, Facebook, but it has recently taken measures to moderate President Trump’s posts for violating policies around misinformation and hate speech, enraging Republicans.

Democrats, meanwhile, tried to steer the conversation back to issues more directly relevant to antitrust, like if and how these companies intimidate their competition, such as when Facebook acquired its then-rival Instagram in 2012; or whether these companies exploit their users’ privacy, like how Google tracks individuals’ online browsing across the web with cookies; or if Apple is shutting out its competitors by taking an unreasonable cut of profits coming in from independent app developers in its App Store.

What really matters here is whether these companies’ business practices are ultimately harming consumers, most of whom have no choice but to use Big Tech in one way or another if they want to do basic things online like search the web, order goods, or stay in touch with their friends.

In an earlier era, Republicans and Democrats on the committee might have come together to try to focus on what’s been seen as an area of relative bipartisan agreement: protecting the free market. That didn’t happen at today’s hearing. Instead, it was a display of partisan divides.

#### Impact’s cyber and deterrence crash

Manchester ’19, [Josh, Founder of Champion Hill and General Partner at Foundation Capital, Venture-backed Startups Will Build the Defense Technology the Free World Needs Right Now, https://medium.com/@joshmanchester/venture-backed-startups-will-build-the-defense-technology-the-free-world-needs-right-now-d2cefa2b2196]

With U.S. defense spending exceeding $700 billion per year, how could the United States be on the brink of a national security emergency? Simply put, America’s national security competitors are outflanking an Industrial-Age U.S. military machine that, like a lumbering dinosaur, is not adapting fast enough to its changing environment. The Pentagon desperately needs rapid innovation. Yet the current defense industry structure is not compatible with U.S. venture capital and high-growth technology industries for several reasons: · The U.S. military’s industrial base is centered on a few huge oligopoly suppliers known within the Beltway as “the Primes” — Lockheed Martin, Boeing, Raytheon, General Dynamics, and Northrop Grumman. These companies, ancient by tech startup standards, have optimized themselves to sustain a 20th century Industrial Age World War II-style force structure which supports the political decision-makers across the country who appropriate the funding that industrial base receives. The Primes are great at building very large platforms that cost billions of dollars and take 15–30 years to field. The Primes are also historically heavy on hardware talent and much lighter on software talent. · The Primes receive the vast majority of defense spending. Defense budgets have historically not unlocked for startups. While a defense private equity industry exists to aggregate small companies and flip them downstream to the Primes, venture capital investors, who have a much higher return threshold, know that it’s hard to have venture outcomes (in other words, to make money) when a company can’t win large market share or survive as a stand-alone business. · Venture-backed tech industries have matured as an asset class in peacetime and most mainstream U.S. venture firms in existence today do not have institutional cultures or histories that include defense innovation, apart from cybersecurity. · Major tech companies, like the FAANGs (Facebook, Apple, Amazon, Netflix, Google and Microsoft too), are generally unwilling to work on defense related projects, and sometimes must deal with employee protests when they do. · Many observers perceive this as an indicator that software engineers generally don’t want to work on defense-related innovation. · Finally, in a bizarre set of twists, some of the organizations that comprise the Limited Partners of venture capital firms (the blue chip endowments and foundations of the U.S. Eastern establishment, often founded on the fortunes of great American industrialists from decades ago, along with public pension funds throughout the country) are [sometimes accidentally funding Chinese defense technology](https://www.buzzfeednews.com/article/ryanmac/us-money-funding-facial-recognition-sensetime-megvii) while often restricting their U.S. venture managers from making defense investments. Foundations and endowments in particular often have negotiated Limited Partnership Agreements with the venture firms they finance precluding them from investing in anything that could have military usage. The irony is that these same tax-exempt pools of capital are frequently investors in Chinese venture funds which provide software to make smarter and more deadly Chinese weapons and to the advanced surveillance systems that have turned China’s Xinjiang province into a virtual Uighur prison camp and a human rights disaster. No single individual or entity has caused this state of events to transpire; it is simply the accumulation of various cultural aspects of the capital formation process of the venture industry and its portfolio companies. Fortunately, we believe that almost all these characteristics will rapidly change over the next few years. But first let’s discuss some additional background. Venture capital has come of age in a time of unprecedented peace The U.S. venture capital industry is about 100 years old. Bessemer Ventures was formed in 1911 and originally had just the family fortune of Henry Phipps Jr., a co-founder of Carnegie Steel, as its sole limited partner. Despite these deep roots, the U.S. venture industry has only institutionalized as an asset class since the mid-1990s. Until then it was extremely clubby and very small. Sequoia Capital, KPCB, Charles River Ventures, and NEA were all founded in the 1970s and Accel Partners in the 1980s. But it has really only been since the mid-1990s (Benchmark Capital was founded in 1995, as was my own former firm, Foundation Capital) that the industry has institutionalized and grown substantially, first in the desktop computing and internet boom, and second during the combination of platform shifts over the last ten years that have given us mobile computing, social media, e-commerce, cloud computing, software-as-a-service and all of their associated new business models. For a quarter of a century, the institutional, mainstream venture investing ecosystem, at the startup, venture firm and limited partner levels, developed business processes, mental models, networks, and expertise in certain technical areas and heuristics — in aggregate, an industry culture — that have created one of the most dynamic parts of the U.S. economy. The U.S. tech industry is also one of the most unique aspects of American life — and a powerful, difficult-to-replicate form of “soft power,” featuring an inclusivity for aspirational immigrant founders — a feature perhaps unequalled in human history. From a long-term U.S. historical viewpoint, it is striking that the venture industry’s maturation has occurred during a unique period in American history when the United States had no major great power competitor, either ideologically or technologically. The Cold War ended in 1991, the Soviet Union dissolved, and Russia was in disarray for the next 15 years. This period of peace was not without its own unique trials, but the security challenges associated with terrorism, counterinsurgency, and lower-intensity military activity have not required the sort of Herculean societal and political efforts that were drawn upon during the Cold War or World War II. We should all be grateful every day that this has been the reality of the last 25 years. A useful analogy might be made with gold. In 1933, President Roosevelt made it illegal for U.S. citizens to own gold. In 1934, Benjamin Graham published the first edition of Security Analysis. In January 1975 it became legal to own gold again. Graham died in 1976. It was therefore illegal to own gold during key years of the development of modern security analysis. From this gap came gold bugs — the weirdos who seemed to always talk about nothing else, and didn’t get invited to key social events. No analogies are perfect but this captures some of the similarities between venture and defense today. Cybersecurity investors understand the cybersecurity parts of U.S. defense. But most mainstream Silicon Valley venture firms do not spend time on other parts of defense due to the industry’s institutionalization during this recent period of relative peace and American dominance — which has also been a time when the lion’s share of defense spending has gone to the Primes, as discussed. Sadly, peace is ahistorical. Great power competitions are a feature of humanity, not a bug. Periods of time when a major power, or superpower, are not challenged in some profound fashion by one or more other powers, regardless of whether they are driven by fear, prestige, economic interest, or ideology — are, in short, rare when looking back on the sojourn of homo sapiens on planet earth. The period when the free world had a monopoly on power has now ended. The tech-defense status quo is inverting The only previously delineated area where we don’t expect much change is from the FAANGs. These massive companies are best viewed as small nation-states themselves with global stakeholders. For example, many of their employees are not U.S. citizens and may not want their employers engaged in U.S. defense work. We think everything else will invert. · We believe defense budgets will begin unlocking for young startups. Many key national security decision-makers in Washington are now seeking better, faster alternatives to the byzantine Pentagon acquisitions process. Thought leaders like Will Roper, in charge of the U.S. Air Force’s $40 billion annual research and acquisition budget, are [eagerly welcoming the contributions that smaller, nimble venture-capital funded entrepreneurs can make](https://federalnewsnetwork.com/dod-reporters-notebook-jared-serbu/2019/03/air-force-looks-to-build-big-idea-pipeline-to-expand-its-industrial-base/). Roper, and others in the Pentagon, are reforming their practices to make it easier for genuine innovators to compete against the legacy defense oligopoly. When recently asked at a conference what problem keeps him up at night, Roper replied, “The industrial base.” · Given the hardware roots of the Primes, they are ill-suited to provide solutions to many of the most pressing problems today. The Defense Department will increasingly allocate resources to startups solving software problems for which the Primes have no existing stock of machine learning engineers. · As this happens some venture firms will experience cultural shifts toward more defense investing. As venture capitalists see that startups are receiving large purchase orders from various Defense Department units, they will develop strategies to deploy capital toward defense innovation. A good example is [last week’s award by the Air Force of $121 million to Pivotal Software in San Francisco](https://dod.defense.gov/News/Contracts/Contract-View/Article/1861753/source/GovDelivery/). · Institutional limited partners as a group will likely slowly allocate away from any China-based manager who could be investing in Chinese military technologies. Some LPs with the freedom to do so may remove restrictions on defense investing from limited partnership agreements. · We believe it is a myth that software engineers do not want to work on defense. This is a classic case of preference falsification, the social phenomenon in which people do not speak their true minds about a given topic, though their actions often indicate otherwise. We believe that talented engineers are often very attracted to defense-related work because it often offers the hardest problems to solve. An enormous opportunity therefore exists for startups: to hire the engineers who don’t want to work for ancient and outdated Primes, and who aren’t very welcome at the FAANGS, but who wish to create the technologies that an increasingly eager democratic government needs to defend itself and its allies. Companies in our own portfolio, like [SpaceX](https://www.spacex.com/), [Rigetti Computing](https://www.rigetti.com/), [Anduril Industries](https://www.anduril.com/), and [Umbra Lab](https://umbralab.com/) are executing this strategy. The hardest technical problems today are defense-related How can data from satellites, drones, land-based radar, ships, and other sources be stitched together, in real time, to find long-range missiles on mobile transporters, hiding among the background in cities, forests, and mountains? How can friendly troops, who have separated into very small units in order to hide and survive, be connected to each other electronically, and be resupplied from historically long ranges? How and to what degree and in what conditions should an adversary’s sensor networks be spoofed? What type of false electronic picture can be painted? The aggregation of targeting data for an air wing takes 72 hours today and has a heavy human component. Can this complex optimization problem be solved autonomously, such that the targeting list for pilots is developed in 15 minutes? How does a deployed force of perhaps 50,000 personnel, with planes, ships, and land forces, continue to fight when satellite links have been knocked out, and “reachback” to the U.S., for data processing, is no longer possible? Can deep learning be used for crisis diplomacy? Put another way, since DeepMind’s AlphaZero can teach itself to move pieces forward on a board to win a game, can it learn to move them backwards, to de-escalate a crisis? These problems, and many others, are asking to be solved by entrepreneurs. Phase change There is a looming breakdown in deterrence. If the U.S. defense establishment is unable to adapt to the new great power competitive environment, then adversaries will be tempted to grab for a fait accompli, with war the result. This has been the pattern since Homer wrote The Iliad; there is no evidence to conclude human behavior is different in the 21st Century. We believe the prevention of this scenario involves rapid technical innovation. The defense environment is more favorable now for upstart firms than anytime in the past several decades. If you are a founder building technology to ensure the survival of government by consent, our firm would like to talk to you.

### 1NC – T Prohibit

TOPICALITY:

#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

Limits---many standards, requiring distinct answers, make the topic unmanageable.

Ground---fringe standards dodge links and allow bidirectional permissiveness.

#### Undisclosed New affs are a voter – they’re unpredictable, undermine clash and ruin pre-round prep – pre-round disclosure solves- justifies infinite condo and cp’s that test the aff

## Advantage 1

### 1NC – AT: Bioterror

#### No bioterrorism---empirics and technical barriers.

Blum & Neumann 20, \*former Head of Laboratory at the Organisation for the Prohibition of Chemical Weapons. He holds a PhD in Biochemistry from the University of Frankfurt, \*\*Professor of Security Studies at King’s College London, and served as Director of its International Centre for the Study of Radicalisation from 2008-18.. (Marc-Michael & Peter, 6-22-2020, "Corona and Bioterrorism: How Serious Is the Threat?", *War on the Rocks*, https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/)

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are teeming with talk about “biological warfare.” ISIL even called the virus “one of Allah’s soldiers” because of its devastating effect on Western countries. According to a recent memo by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks.

How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the technical challenges associated with weaponizing biological agents have proven insurmountable. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy.

A History of Failures

Biological warfare, which uses organisms and pathogens to cause disease, is nearly as old as war itself. The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat).

Among terrorists, however, the use of biological weapons has been rarer, although groups from nearly all ideological persuasions have contemplated it. Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. No one died in any of these instances.

The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to buy, steal, or develop biological agents. For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop.

Yet none of these efforts succeeded. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that none of the toxin had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose only fatality was the hamster on which it was tested. Of the tens of thousands of people that jihadists have murdered, not a single one has died from biological agents.

It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as Bruce Ivins, a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents.

Technical Challenges

Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a technical level, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be isolated and disseminated. But this is more difficult than it seems. As well as advanced training in biology or chemistry, isolating the agent requires significant experience. It also has to be done in a safe, contained environment, to stop it from spreading within the terrorist group. Contrary to what al-Qaeda said in one of its online magazines, you can’t just make a (biological) weapon “in the kitchen of your mom!”

In addition, there is the challenge of dissemination. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in perfect conditions. In the case of the bacterium anthrax, for example, only spores of a particular size are likely to be effective in certain kinds of weather. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is unlikely that terrorist groups possess the resources, stable environment, and patience to do likewise.

### 1NC – Court Circumvention

#### Courts are bought out – circumvents enforcement

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

#### Fiating through is a voting issue for predictability AND NEG ground.

Michael D. Moberly 14, B.B.A., J.D., University of Iowa; Shareholder, Ryley, Carlock & Applewhite, “Contemplating The Recognition of a Common Law Tort for Wrongfully Refusing to Hire Bankruptcy Debtors,” 22 Am. Bankr. Inst. L. Rev. 431, Lexis

To the extent the Wenners court addressed this "adequate alternative remedy" issue, 216 which is occasionally referred to as preclusion 217 (and also, somewhat misleadingly, 218 as another form of preemption), 219 the court concluded that the plaintiff's common law claim was not barred because section [\*466] 525 provides no remedy for employment terminations that are prohibited by the Bankruptcy Code. 220 [FOOTNOTE 220 BEGINS] See Wenners v. Great State Beverages, Inc., 663 A.2d 623, 625 (N.H. 1995) ("While a plaintiff may not pursue a common law remedy where the legislature intended to replace it with a statutory cause of action . . . here, there has been no clear statutory intent to supplant the common law cause of action . . . 'Section 525(b) itself provides no remedy for violation by a private employer.'" (quoting In re Hicks, 65 B.R. 980, 984 (Bankr. W.D. Ark. 1986))); see also Weeden v. Sears, Roebuck & Co., No. 98-435, 1999 WL 1209494, at \*3 n. 2 (D. N.H May, 25 1999) ("[T]he Wenners court found dispositive the fact that although a federal prohibition of employment termination existed, federal law provided no remedy for violations of the prohibition and no procedures for pursuing a violation."). [FOOTNOTE 220 ENDS] In contrast to its analysis of the federal preemption issue, 221 this aspect of the Wenners court's opinion is unpersuasive. 222 While section 525 provides no specific remedy for the bankruptcy-based discrimination that it prohibits, 223 section 105(a) of the Bankruptcy Code authorizes courts to enforce other provisions of the Code, 224 as the Robinette court recognized. 225 Several courts have invoked this authority to fashion remedies for violations of the antidiscrimination provision. 226

### 1NC – AT: Debris – Kessler

#### No Kessler syndrome

Von Fange 17 [Daniel Von Fange is a full stack developer that builds web platforms, with a particular interest in space applications. Kessler Syndrome is Over Hyped. May 21, 2017. braino.org/essays/kessler\_syndrome\_is\_over\_hyped/]

Kessler Syndrome is overhyped. A chorus of online commenters great any news of upcoming low earth orbit satellites with worry that humanity will to lose access to space. I now think they are wrong.

What is Kessler Syndrome?

Here’s the popular view on Kessler Syndrome. Every once in a while, a piece of junk in space hits a satellite. This single impact destroys the satellite, and breaks off several thousand additional pieces. These new pieces now fly around space looking for other satellites to hit, and so exponentially multiply themselves over time, like a nuclear reaction, until a sphere of man-made debris surrounds the earth, and humanity no longer has access to space nor the benefits of satellites.

It is a dark picture.

Is Kessler Syndrome likely to happen?

I had to stop everything and spend an afternoon doing back-of-the-napkin math to know how big the threat is. To estimate, we need to know where the stuff in space is, how much mass is there, and how long it would take to deorbit.

The orbital area around earth can be broken down into four regions.

Low LEO - Up to about 400km. Things that orbit here burn up in the earth’s atmosphere quickly - between a few months to two years. The space station operates at the high end of this range. It loses about a kilometer of altitude a month and if not pushed higher every few months, would soon burn up. For all practical purposes, Low LEO doesn’t matter for Kessler Syndrome. If Low LEO was ever full of space junk, we’d just wait a year and a half, and the problem would be over.

High LEO - 400km to 2000km. This where most heavy satellites and most space junk orbits. The air is thin enough here that satellites only go down slowly, and they have a much farther distance to fall. It can take 50 years for stuff here to get down. This is where Kessler Syndrome could be an issue.

Mid Orbit - GPS satellites and other navigation satellites travel here in lonely, long lives. The volume of space is so huge, and the number of satellites so few, that we don’t need to worry about Kessler here.

GEO - If you put a satellite far enough out from earth, the speed that the satellite travels around the earth will match the speed of the surface of the earth rotating under it. From the ground, the satellite will appear to hang motionless. Usually the geostationary orbit is used by big weather satellites and big TV broadcasting satellites. (This apparent motionlessness is why satellite TV dishes can be mounted pointing in a fixed direction. You can find approximate south just by looking around at the dishes in your northern hemisphere neighborhood.) For Kessler purposes, GEO orbit is roughly a ring 384,400 km around. However, all the satellites here are moving the same direction at the same speed - debris doesn’t get free velocity from the speed of the satellites. Also, it’s quite expensive to get a satellite here, and so there aren’t many, only about one satellite per 1000km of the ring. Kessler is not a problem here.

How bad could Kessler Syndrome in High LEO be?

Let’s imagine a worst case scenario.

An evil alien intelligence chops up everything in High LEO, turning it into 1cm cubes of death orbiting at 1000km, spread as evenly across the surface of this sphere as orbital mechanics would allow. Is humanity cut off from space?

I’m guessing the world has launched about 10,000 tons of satellites total. For guessing purposes, I’ll assume 2,500 tons of satellites and junk currently in High LEO. If satellites are made of aluminum, with a density of 2.70 g/cm3, then that’s 839,985,870 1cm cubes. A sphere for an orbit of 1,000km has a surface area of 682,752,000 square KM. So there would be one cube of junk per .81 square KM. If a rocket traveled through that, its odds of hitting that cube are tiny - less than 1 in 10,000.

So even in the worst case, we don’t lose access to space.

Now though you can travel through the debris, you couldn’t keep a satellite alive for long in this orbit of death. Kessler Syndrome at its worst just prevents us from putting satellites in certain orbits.

In real life, there’s a lot of factors that make Kessler syndrome even less of a problem than our worst case though experiment.

* Debris would be spread over a volume of space, not a single orbital surface, making collisions orders of magnitudes less likely.
* Most impact debris will have a slower orbital velocity than either of its original pieces - this makes it deorbit much sooner.
* Any collision will create large and small objects. Small objects are much more affected by atmospheric drag and deorbit faster, even in a few months from high LEO. Larger objects can be tracked by earth based radar and avoided.
* The planned big new constellations are not in High LEO, but in Low LEO for faster communications with the earth. They aren’t an issue for Kessler.
* Most importantly, all new satellite launches since the 1990’s are required to include a plan to get rid of the satellite at the end of its useful life (usually by deorbiting)

So the realistic worst case is that insurance premiums on satellites go up a bit. Given the current trend toward much smaller, cheaper micro satellites, this wouldn’t even have a huge effect.

I’m removing Kessler Syndrome from my list of things to worry about.

### 1NC – I/D – Nuke Terror

#### No nuke terror – people like Allison are hacks

* Two decades of threats haven’t panned out
* Too many things can go wrong:

Getting trusted collaborators

Stealing and transporting guarded material

Getting the top technicians in the world

No ability to test

Skilled detonation crew

All that while attracting zero attention

* Weapons have safety devices, are stored in pieces in different places
* Terrorists are like Bond villains that scheme instead of accomplishing anything
* Most attacks are bombs which don’t even work

Mueller and Stewart 10/29/18 [John Mueller is Woody Hayes Senior Research Scientist, Mershon Center for International Security Studies, and adjunct professor of Political Science, at Ohio State University. He is also a Senior Fellow at the Cato Institute in Washington. Mark G. Stewart is Professor of Civil Engineering and Director of the Centre for Infrastructure Performance and Reliability at The University of Newcastle in Australia. Terrorism and Bathtubs: Comparing and Assessing the Risks. October 29, 2018. https://www.tandfonline.com/doi/abs/10.1080/09546553.2018.1530662?journalCode=ftpv20]

However, there is of course no guarantee that things will remain that way, and the 9/11 attacks inspired the remarkable extrapolation that, because the terrorists were successful with box cutters, they might soon be able to turn out weapons of mass destruction— particularly nuclear ones—and then detonate them in an American city. For example, in his influential 2004 book, Nuclear Terrorism, Harvard’s Graham Allison relayed his “considered judgment” that “on the current path, a nuclear terrorist attack on America in the decade ahead is more likely than not.”11 Allison has had a great deal of company in his alarming pronouncements. In 2007, the distinguished physicist Richard Garwin put the likelihood of a nuclear explosion on an American or European city by terrorist or other means at 20 percent per year, which would work out to 91 percent over the eleven-year period to 2018.12

Allison’s time is up, and so is Garwin’s. These off-repeated warnings have proven to be empty. And it is important to point out that not only have terrorists failed to go nuclear, but as William Langewiesche, who has assessed the process in detail, put it in 2007, “The best information is that no one has gotten anywhere near this. I mean, if you look carefully and practically at this process, you see that it is an enormous undertaking full of risks for the would-be terrorists.”13 That process requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew, all the while attracting no attention from outsiders.

Nor have terrorist groups been able to steal existing nuclear weapons—characteristically burdened with multiple safety devices and often stored in pieces at separate secure locales—from existing arsenals as was once much feared. And they certainly have not been able to cajole leaders in nuclear states to palm one off to them—though a war inflicting more death than Hiroshima and Nagasaki combined was launched against Iraq in 2003 in major part under the spell of fantasies about such a handover.14

More generally, the actual terrorist “adversaries” in the West scarcely deserve accolades for either dedication or prowess. It is true, of course, that sometimes even incompetents can get lucky, but such instances, however tragic, are rare. For the most part, terrorists in the United States are a confused, inadequate, incompetent, blundering, and gullible bunch, only occasionally able to get their act together. Most seem to be far better at frenetic and often self-deluded scheming than at actual execution. A summary assessment by RAND’s Brian Jenkins is apt: “their numbers remain small, their determination limp, and their competence poor.”15 And much the same holds for Europe and the rest of the developed world.16 Also working against terrorist success in the West is the fact that almost all are amateurs: they have never before tried to do something like this. Unlike criminals they have not been able to develop street smarts.

Except perhaps for the use of vehicles to deliver mayhem (though this idea is by no means new in the history of terrorism), there has been remarkably little innovation in terrorist weaponry or methodology since 9/11.17 Like their predecessors, they have continued to rely on bombs (many of which fail to detonate or do much damage) and bullets.18

## Advantage 2

### 1NC – Cards

#### Norms fail

Bordachev 13 (Timofei, Doctor of Political Science, is the Director of the Center for Comprehensive International and European Studies at the Higher School of Economics, “Political Tsunami Hits Hard,” 6/30, http://eng.globalaffairs.ru/number/Political-Tsunami-Hits-Hard-16054)

The financial crisis in the United States, which in 2008 went global, and the continuing efforts by countries around the world to fight its effects have highlighted four most important tendencies in international affairs. First, pretty obvious is the conflict between the growing economic unity of the world and its worsening political fragmentation. The rise of sovereign ambitions and attempts to address all problems at the national level has come into conflict with financial and economic globalization and exacerbates crisis trends. Second, democratization in international politics and greater independence of individual states play an ever greater role. This “in-depth unfreezing” for the first time manifested itself in China’s soaring global ambitions and in the national interests and requests of other Asian countries. Turkey, a stable ally of the West in NATO and a EU aspirant waiting patiently in the antechamber, is trying on the guise of a regional power ever more often. In the meantime, the need for taking into account the ever larger range of opinions quickly erodes the international institutions that emerged in the Cold War era. This is seen not just in the sphere of security: the United Nations efficiency has largely fallen victim to the first phase of the global geopolitical catastrophe of the 1990s. Third, the growing international weight of the new countries and attempts by the old-timers, who won the Cold War, to preserve the hard-won status quo bring back the conservative interpretations of such terms as “sovereignty” and “sovereign rights.” Not only the leaders of new-comers to world politics, or the United States, traditionally concerned about its sovereignty, but quite respectable heads of European states, too, start talking about the protection of national interests. Finally, military power is ever more frequently employed by major powers as a tool to address foreign policy issues. EU countries and the United States used force and threats to use force back at the time when they were getting their hands on the assets of the former USSR. However, they were faced with a very limited set of tasks then. It never occurred to anyone in the West to say in 1999 that the purpose of NATO’s operation against Yugoslavia was to force Slobodan Milosevic to resign or, still worse, to put him to death by some untraditional way of hanging. The need for using military force with or without reason merely confirms that the international community has no other means to prevent the emergence or escalation of conflicts.

#### Lots of violations now and no impact to them---OST is unenforceable.

Yiannopoulos 18 Philip Yiannopoulos is a freelance journalist. “Inside the epic debate on rethinking our 50-year-old Outer Space Treaty,” *Fast Company*, 9/24/18, <https://www.fastcompany.com/90240304/inside-the-epic-debate-on-rethinking-our-50-year-old-outer-space-treaty>

Just yesterday, a pair of Japanese robots may have landed on an asteroid, as part of the country’s research efforts and amid a surge in startups focused on asteroid mining. Last week saw finger-pointing reminiscent of the Cold War over possible sabotage of the Soyuz Spacecraft used by Russia and the U.S. Every other week, there’s another rocket fired into space by one of several eccentric billionaires, who are also trying sell you tickets for orbit (or to colonize Mars). Recently, SpaceX started its launch of thousands of satellites into space to beam internet virtually anywhere in the world. And earlier in the summer President Trump prompted plenty of head-scratching and Star Wars puns with his surprise announcement of a Space Force. //// That’s a lot of activity, fueling intense discussions and fiery debates about the commercialization and militarization of space, the proper role of humans in our galaxy, and the future of humanity. Yet it’s all guided by an outdated set of rules that were established a few years before Neil Armstrong took that first fateful step on the moon. The 1967 Outer Space Treaty was shaped by ~~paranoia~~ over the space race between the Soviets and the Americans, and even the brightest minds of the time couldn’t anticipate the complexities of now and tomorrow. //// In a long-overdue effort to prepare for that future, on Tuesday the UN will use the 50th anniversary of a Conference on the Exploration and Peaceful Uses of Outer Space to “renew and strengthen its mandate” and to call attention to developing pertinent laws. As it stands, the current treaty bans the placement of WMDs in space, forbids any military action past the atmosphere, and declares the exploration of space for the benefit of all countries. //// But the 50-year-old treaty definitely needs some updating. While speaking as a U.S. Representative from Oklahoma, Jim Bridenstine said the treaty was mired in Cold War thought, and “now, almost every nation on Earth has some sort of presence in space, and we have to be concerned with threats like jamming, dazzling, spoofing, and hacking satellite constellations.” (Bridenstine was eventually tapped by Trump to head NASA, despite his lack of scientific experience.) //// So what kind of challenges should we expect going forward? Well, as below, so above. A look at the UN’s Convention on the Law of the Sea illustrates some current and potential problems. This treaty eventually established seabeds and ocean floor “beyond the limits of national jurisdiction.” The Law of the Sea proclaims such international spaces as the Common Heritage of Mankind, a phrase now applied to outer space. //// Unfortunately, humanistic rhetoric is no match for strategic military advantage. And worse, the UN has a track record of being toothless. Recently China started building islands near the Philippines, a clear violation of international law. The nation then flat-out lied about its intention to militarize these spaces. China simply did not attend its hearing at the International Court of Justice. //// Similar problems exist in today’s space race as different countries militarize in orbit. The EU’s Galileo satellite “proposes more civil-military synergies in European space systems,” two-thirds of Russia’s satellite force is military, and, of course, plans for the U.S.’s Space Force are proceeding apace. Legally, these actions fall within the Outer Space Treaty. Founder of the Global Space Law Center, Mark Sundahl, explains, “You can’t stop countries putting things into space for the purposes of self-defense.” //// Yet there are some lines that shouldn’t be crossed, he argues. In 2007 China destroyed one of its own satellites.

Technically the event did not break the peaceful use clause, but arms controls experts considered the explosion a flex of military muscle. “I mean that kind of behavior can’t be tolerated,” Sundahl says. “But no one spoke up against it as being a violation of the law. And as far as international community says right now, those kinds of action are legal . . . which is ridiculous.” The Chinese actions prompted American response, and added to the biggest problem facing the developing space industry today: orbital junk. //// Raising awareness about the debris cluttering space takes up a lot of time at the Secure World Foundation, as well as its mission to promote “cooperative sustainability” in space. As project manager Josh Wolny says, its mission is to “help everyone realize they are invested in space and they have something to lose if the environment is damaged.” The foundation generates research and works with the UN as well as private companies to prepare for a successful space industry. //// Wolny refers to something called the Kessler Syndrome, an increasingly likely scenario in which space junk crashes into a satellite, and thus produces more debris to become part of an ever-growing spiral that inevitably makes it almost impossible to safely launch into space or satellite orbit. And given our current lack of action when it comes to the Texas-sized garbage patch of plastic floating in the Pacific, orbital cleanliness may be a pipe dream.

# 2NC

### Future Gens CP

#### Authority – Transferring decision rights on designated policy matters from existing branches to one explicitly chartered for future generations is key

Boston 14 [Jonathan Boston, Professor of Public Policy, School of Government, Victoria University of Wellington, Fulbright Fellow, American University. Governing for the Future: How to bring the long-term into short-term political focus. November 5, 2014. https://www.american.edu/spa/cep/upload/jonathan-boston-lecture-american-university.pdf]

But one other point deserves highlighting: if there is only a limited capacity to change the structure of political demand to incentivize policy-makers to give adequate weight to long-term considerations, then other options must be considered. These include additional legislative constraints on what policy-makers are able to decide and transferring formal decision-rights on designated policy matters to bodies that are partially insulated from short-term political pressures. In each case, of course, the overall desirability of such options must be carefully weighed. Not all constraints and insulating techniques are democratically acceptable.

#### But, ambiguity over who has authority disrupts governance for future generations – that causes costly, protracted haggling over authority, but the cp’s early and clear demarcation of authority solves – that turns signal because risk-averse actors will prefer certain rules that are slightly unfavorable over favorable divisions of authority that are unpredictable

Posner and Vermeule 8 [The OG's. Constitutional Showdowns. 2008. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2745&context=journal\_articles]

Clarification of constitutional authority provides major benefits to the public. When public officials do not know who has the authority to perform some action, they make inconsistent decisions or fail to decide, leaving subordinates uncertain how to proceed and the public confused about law and policy. The public, unable to predict how the government will act, is likely to be excessively cautious. Future generations and current actors—officials, citizens, and litigants—benefit from clarification of the rules of the constitutional game, all else equal. Obviously an actor might prefer uncertainty to clearly bad rules, but only if the uncertainty creates a chance that the rules will eventually be clarified in the actor’s favor. At any given level of (expected) goodness or badness of the rules, clarity is better than lack of clarity. Furthermore, a risk-averse actor might prefer a clear rule that is somewhat unfavorable, if an ambiguous rule with a more favorable expected outcome carries with it a risk of severe downside loss. And two risk-averse parties may both prefer a compromise that clearly gives them only half a loaf, if there is a chance that uncertainty will eventually be resolved by giving the other party the whole loaf.

#### Independence from political bodies is fundamental to success

Smith 15 [Graham Smith, Foundation for Democracy and Sustainable Development. The Democratic Case for an Office for Future Generations. April 2015. [www.fdsd.org/site/wp-content/uploads/2015/04/Office-for-Future-Generations-FDSD-format.81.pdf](http://www.fdsd.org/site/wp-content/uploads/2015/04/Office-for-Future-Generations-FDSD-format.81.pdf)] **Notes: OFG = Offices for Future Generations**; **Italics in Original**

The democratic credentials of an OFG depend very much on how its role and functions are conceived.

At a 2014 conference on Model Institutions fora Sustainable Future,1 there was some disagreement as to the desirability of an independent body. Critics contend that such institutions should be more formally embedded and connected to power: in other words, be part of the parliamentary (and/or executive) infrastructure. This would also ensure explicit democratic legitimacy for the body. For example, the permanent Finnish Parliamentary Committee for the Future has a specific remit to consider the long-term within the work of the Assembly.2

The Finnish Parliamentary Committee for the Future consists of 17 parliamentarians from all political parties. It deliberates on parliamentary documentation, makes submissions to other committees and engages in futures research modelling on issues that range from the domestic (e.g. health care and social capital) through to the international (e.g. relations with China, Russia and the rest of Europe). It has also actively promoted innovative engagement techniques such as crowdsourcing and held hearings to engage the broader public. The virtue of such a design is that it is embedded in the day-to-day work of parliament and the political parties.

The Finnish Parliamentary Committee is without doubt an important parliamentary innovation, not least because it is a rare opportunity for parliamentarians to engage across party lines within a time frame that extends beyond day-to-day politics and the normal electoral cycle. We can also learn much from its methods of working. The extent to which its impact in other parliamentary contexts is replicable, however, is an open question, especially where party cleavages are more prevalent and public confidence in parliament much lower.

It is also a mistake to underestimate the important democratic case for *independent* oversight within political systems. OFGs are creations of parliamentary legislation and thus have formal democratic anchorage. But it is their democratic function as an independent actor that is fundamental.

#### Power – the only two types of separation of powers are power to assert and powerless – quarrels over authority will weaken the new branch

Tremmel 13 [Joerg Chet Tremmel is a Professor for "intergenerationally just policies" at the University of Tuebingen. He is Editor-in-chief of the Intergenerational Justice Review and a visiting lecturer at the Johann-Wolfgang-Goethe-University Frankfurt, the University of Stuttgart and the Heinrich-Heine-University in Dusseldorf, Germany. An extended separation of powers model as the theoretical basis for the representation of future generations. July 26, 2013. https://www.futurejustice.org/wp-content/uploads/2013/11/Paper\_Future-Branch\_Tremmel.pdf]

Let’s deal with the former first. If a new SO (sustainability organization) is granted real force to act, it is already a variant of the extension of the division of powers model, even if it is not named as such. The only two variants are the “power to assert" and “powerless”. If the representatives of the three established branches quarrel over the new SO, or they make concrete attempts to disempower it, the new SO constitutes a new branch of government - even if at first with a weak power base. The disempowerment of the ombudsman as well as the commission was a clear indicator that these two organisations have already acquired the power to assert.

#### It must have veto power over other branches – the perm is just an extension of the advisory system

Tremmel 6 [Joerg Chet Tremmel is a Professor for "intergenerationally just policies" at the University of Tuebingen. He is Editor-in-chief of the Intergenerational Justice Review and a visiting lecturer at the Johann-Wolfgang-Goethe-University Frankfurt, the University of Stuttgart and the Heinrich-Heine-University in Dusseldorf, Germany. Establishing intergenerational justice in national constitutions. Handbook of Intergenerational Justice. 2006. profs-polisci.mcgill.ca/muniz/intergen/Tremmel%20-%20Establishing%20intergenerational%20justice%20in%20national%20constitutions.pdf]

These kinds of new institutions make sense if they really have the competencies to protect future generations. This means, for instance, that these institutions can veto or at least freeze laws or that they can propose laws themselves. Without this responsibility the advisory system is merely extended. In Germany, for instance, there are already four institutions: the German Advisory Council on the Environment (Sachverstandigenrat fur Umweltfragen, www.umweltrat.de), the German Advisory Council on Global Change (Wissenschaftlicher Beirat der Umweltregierung fiir Globale Umweltveranderungen, www.wbgu.de), the German Council for Sustainable Development (Rat fur Nachhaltige Entwicklung, www. nachhaltigkeitsrat.de) and the Parliamentary Advisory Council on Sustainable Development (Parlamentarischer Beirat fiir nachhaltige Entwicklung, www.bundestag.de/parlament/parl\_beirat/) which was appointed in 2004. They all do not have the necessary power to stop laws which threaten the well-being of future generations.

#### Only a legitimate body solves

Smith 15 [Graham Smith, Foundation for Democracy and Sustainable Development. The Democratic Case for an Office for Future Generations. April 2015. www.fdsd.org/site/wp-content/uploads/2015/04/Office-for-Future-Generations-FDSD-format.81.pdf]

The idea here is that an OFG acts as a champion for systematic public engagement on future-orientated policy assessment, in so doing increasing its legitimacy in the eyes of the public and political decision makers. Enhancing such an agency’s standing is critical for its capacity to effectively challenge the myopic dysfunctionalities of democratic systems.

#### AFF has to change Sherman, Clayton, or FTCA – becoming ‘law’ requires Congress and presidential approval

Hicks 21 [Coryanne Hicks, Business Insider writer. “The Sherman Antitrust Act is the first in a line of federal laws protecting consumers from unfair prices.” 10/22/21. https://www.businessinsider.com/sherman-antitrust-act]

The Sherman Antitrust Act was intended to "preserve free and unfettered competition as the rule of trade" for the benefit of consumers. It made monopolization and other contracts that unreasonably restrain trade illegal. It is one of three core federal antitrust laws, along with the Clayton Antitrust Act and the Federal Trade Commission Act.

The Sherman Act was named for Sen. John Sherman of Ohio, who was considered an expert on regulating commerce. It was signed into law by President Benjamin Harrison on July 2, 1890.

#### CP is distinct

Coble 17 [Christopher Coble, Esq. Can President Trump Change the Constitution? February 21, 2017. https://blogs.findlaw.com/law\_and\_life/2017/02/can-president-trump-change-the-constitution.html]

No president can unilaterally alter, rewrite, or amend the Constitution. What presidents, as the head of the executive branch, are able to do is direct how laws pertaining to constitutional rights are to be enforced, via executive orders. For example, former President Barack Obama couldn't rewrite the Second Amendment, but he could take executive action on firearm licensing requirements and background checks for gun purchases.

#### It’s distinct from the states which are required for con con

Black’s Law 4. [Black’s Law Dictionary, 8th Edition, June 1, 2004, pg.716]

Federal government. 1. A **national government** that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national politics matters – Also termed (in federal states) **central government**. 2. **the U.S. government** – Also **termed national government**. [Cases: United States -1 C.J.S. United States - - 2-3]

#### CP is states

Federal Register N.D. [National Archives, “Constitutional Amendment Process.” https://www.archives.gov/federal-register/constitution]

The Constitution provides that an amendment may be proposed either by the Congress with a two-thirds majority vote in both the House of Representatives and the Senate or by a constitutional convention called for by two-thirds of the State legislatures. None of the 27 amendments to the Constitution have been proposed by constitutional convention. The Congress proposes an amendment in the form of a joint resolution. Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The original document is forwarded directly to NARA's Office of the Federal Register (OFR) for processing and publication. The OFR adds legislative history notes to the joint resolution and publishes it in slip law format. The OFR also assembles an information package for the States which includes formal "red-line" copies of the joint resolution, copies of the joint resolution in slip law format, and the statutory procedure for ratification under 1 U.S.C. 106b.

The Archivist submits the proposed amendment to the States for their consideration by sending a letter of notification to each Governor along with the informational material prepared by the OFR. The Governors then formally submit the amendment to their State legislatures or the state calls for a convention, depending on what Congress has specified. In the past, some State legislatures have not waited to receive official notice before taking action on a proposed amendment. When a State ratifies a proposed amendment, it sends the Archivist an original or certified copy of the State action, which is immediately conveyed to the Director of the Federal Register. The OFR examines ratification documents for facial legal sufficiency and an authenticating signature. If the documents are found to be in good order, the Director acknowledges receipt and maintains custody of them. The OFR retains these documents until an amendment is adopted or fails, and then transfers the records to the National Archives for preservation.

A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the States (38 of 50 States). When the OFR verifies that it has received the required number of authenticated ratification documents, it drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice to the Congress and to the Nation that the amendment process has been completed.

#### Third is prohibitions – they’re binding without exception

Pediaa 15 [Pediaa is a learning platform that answers queries and clarifies language. “Difference Between Prohibited and Restricted.” 10/12/15. https://pediaa.com/difference-between-prohibited-and-restricted/]

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

#### Fourth is should – “Should” is synonymous with “must”– the plan enacts a mandatory, non-discretionary imperative to increase prohibitions on anticompetitive conduct. This interpretation is most predictable because it speaks to the consensus of courts to define the word when policies are enacted into law – that’s different from the CP, which allows modifications

Judge Henry Nieto, Colorado Court of Appeals, 8-20-2009

People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense. HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word **"**conveys a sense of duty and obligationandcould not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation andnot discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words **have the same meaning**. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).

#### Fifth – “Resolved” is definite

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve Audio Help /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation~~[ri-zolv~~] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

to come to a definite or earnest decision about; determine (to do something): I have resolved that I shall live to the full.

#### Sixth – ‘Law’ must be permanent

V.C. Fallon 29, Judge on the Court of Chancery of New Jersey, “Ex Parte Hague”, 104 N.J. Eq. 31, 34, 144 A. 546, 548, 1929 N.J. Ch. LEXIS 186, 1/5/1929, Lexis

A statute (law) is something permanent, uniform and universal. The term law, when used without restriction or qualification, refers to the public law of the state. It is not every act, legislative in form, that is a law. An appropriation bill, for instance, is not a law in its ordinary sense. Such a bill pertains only to the administrative functions of government. A resolution of a legislative body is not a law. The chief distinction between a resolution and a law seems to be that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing, and is only to have a temporary effect on such particular thing; while by the latter it is intended to permanently direct and control matters applying to persons or things in general.

#### Seventh – ‘Substantial’ requires immediate law

**Words and Phrases 64** (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 Ill. App. 308, 318.

#### And certainty

Wilbers 6, JD Candidate @ U Missouri (Marcus, “Residential Privacy and Free Speech: Competing Interests in Charitable Solicitation Regulation,” https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3722&context=mlr)

In its final level of analysis, the court asserted that the act did not substantially limit charitable solicitations.134 Because the act left open other possibilities of solicitation such as making "in-house" calls, mailing campaigns, or in person soliciting, the act left open alternate channels and was, therefore, not a substantial limit to charitable solicitations.

#### The CP applies intergenerational equity to future generations – that’s better than trying to decide now whether the plan is beneficial across deep time – every other country would say yes

Tan 2k [David Tan, LL.M., Harvard Law School; LL.B. (Hons), B.Com., University of Melbourne. Former Tutor in Law, Trinity College, University of Melbourne. Towards a New Regime for the Protection of Outer Space as the "Province of All Mankind". 2000. https://pdfs.semanticscholar.org/16cd/f9b063cae68c037ec9dab376c08496e43a32.pdf]

Edith Brown Weiss has advanced the theory of “intergenerational equity,” which provides for generational rights and obligations.158 Her thesis consists of a normative framework of intersecting theories of intergenerational and intragenerational equity that are derived from an underlying planetary trust, embodying the notion that generations act as stewards to sustain the welfare and well-being of all generations. This planetary trust obliges “each generation to preserve the diversity of the resource base and to pass the planet to future generations in no worse condition than it receives it.”159 The principle of the conservation of options requires each generation “to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should be entitled to diversity comparable to that enjoyed by previous generations.”\*60 The theory of intergenerational equity is an appealing one. Unfortunately, Weiss’s model generally rests upon an intertemporal human rights model for preserving the global environment. This presents many problems, ranging from the questionable existence of the right to a decent environment to the issue of remedies in respect of claims made by future generations against present generations.161

Whether the global awareness of the harm to our sense of intergenerational identity, as evidenced by the various U.N. General Assembly resolutions and numerous international conventions, will be sufficient to mobilize the implementation and enforcement of effective legal measures on behalf of future generations is doubtful. But more importantly, the notions of intergenerational identity and sustainable development will prove to be invaluable concepts in framing the discussion in Part VI.

Current literature has concentrated on the notion of sustainable development as involving the integration of economic and environmental considerations at all levels of decision-making.162 But the outer-space environment has been largely ignored, as if it were simply economic development on Earth that must be environmentally sound. There is no reason, however, why the precautionary principles that emerge from the concept of sustainable development in the Stockholm Declaration, the Rio Declaration, and the World Charter for Nature should not apply equally to the outer-space environment. Few states, if any, will take issue with the proposition that the exploration and use of outer space should be sustainable. It is in the common interest of all states, whether spacefaring or otherwise, to subscribe to a regime that allows for the development of space activities in a manner that leaves the space environment in a substantially unimpaired condition for future generations. One might even ultimately find that the uniqueness and vulnerability of the outer-space environment demand that the international community as a whole recognize sustainable development as a “global ethic”163 that transcends terrestrial boundaries, as a peremptory norm that prohibits “policies and practices that support current living standards by depleting the productive base, including natural resources, and that leaves future generations with poorer prospects and greater risks than our own.”164 We should not confine our actions to those we are now able to determine as directly or indirectly benefiting ourselves or our descendants. On the contrary, we should “cultivate our natural sense of obligation not to act wastefully or wantonly even when we cannot calculate how such acts would make any present or future persons worse off.”165 It seems impossible to find universally agreed-upon limits on the freedom of exploration and use of outer space. Rather than focus on indeterminate rules of custom-formation, we should concentrate on establishing fair and workable arrangements and institutions that can successfully accommodate the competing interests of all nations. With these guidelines in mind, we will now examine new methods of treaty-making that will enhance the willingness of states to participate in an environmental program that seeks to achieve an acceptable balance between pollution control and freedom of space exploration.

#### Basing policy on protections for future generations is a uniquely salient global signal of cooperation – it’s offense if they muddle their authority – that’s on the perm

MRF 17 [Mary Robinson Foundation, a centre for thought leadership, education and advocacy on the struggle to secure global justice for those people vulnerable to the impacts of climate change who are usually forgotten – the poor, the disempowered and the marginalised across the world. Global Guardians: A voice for future generations. Position Paper | Third Edition – April 2017. https://www.mrfcj.org/wp-content/uploads/2017/08/Global-Guardians-A-Voice-for-Future-Generations-April-2017.pdf]

Intergenerational equity, understood as fairness between generations, is a universal concept across the world and across cultures. It is a principle that informs constitutions, international treaties, economies, religious beliefs, traditions and customs1. Sustainable development is grounded in the concept of fairness between generations, meaning that the needs of present generations are met without compromising the ability of future generations to meet their needs2. Within the UN System, the need to safeguard the wellbeing of future generations is well established and is recognised as a guiding principle in many fora including the Rio Declaration on Environment and Development (1992), the Declaration of the UN Conference on Sustainable Development (2012), the 2030 Agenda for Sustainable Development (2015) and the Paris Agreement on Climate Change (2015). In total, the needs of future generations are recognised in as many as 203 UN General Assembly Resolutions3. Despite these commitments, there is currently no mechanism in the UN system through which the needs of future generations is represented in decision making processes.

#### Avoids DA’s to con con

Thompson 10 [Department of Government, Harvard University. Representing Future Generations: Political Presentism and Democratic Trusteeship. Critical Review of International and Political Philosophy, 2010. https://dash.harvard.edu/bitstream/handle/1/9464286/Representing%20Future%20Generations-Barry%20final.pdf?sequence=1]

Constitutional Conventions. One important way the democratic capacities of future citizens can be diluted is by entrenched political constraints (such as constitutional prohibitions) that make it difficult for representatives to respond to social and technological changes. The Trustees could from time to time recommend the calling of a constitutional convention in order to keep the government and its constitution in sync with the changing circumstances and needs of its citizens. Such a power could enable a current generation to overcome the dead hand of the past, and reclaim its capacity for competent control. To be sure, many observers are thankful that the convention route to amending the U.S. constitution has never been used.12 The fear of a runaway convention is strong among both liberals and conservatives. But any constitutional convention the Trustees would recommend should be strictly limited so as to ensure that delegates could deal only with provisions that affect the democratic process (such as voting).

#### 2 – This is an incredibly important debate – the precise institutional structure, including whether to choose a fourth body or one connected to existing branches is key – additionally, proves tons of points of offense for the aff

Tremmel 13 [Joerg Chet Tremmel is a Professor for "intergenerationally just policies" at the University of Tuebingen. He is Editor-in-chief of the Intergenerational Justice Review and a visiting lecturer at the Johann-Wolfgang-Goethe-University Frankfurt, the University of Stuttgart and the Heinrich-Heine-University in Dusseldorf, Germany. An extended separation of powers model as the theoretical basis for the representation of future generations. July 26, 2013. https://www.futurejustice.org/wp-content/uploads/2013/11/Paper\_Future-Branch\_Tremmel.pdf]

The aim of this paper was to identify the right questions, not provide answers. The basic idea was that in order to institutionalise sustainability, the division of powers between the legislative, executive and judicial branches should be extended to include a new institutional level. But the devil lies in the details. He who demands for a new representation for future generations must find solutions to the following question:

• Should the fourth branch be able to suggest laws, stop them, or consider laws with veto power? Should it have a rather proactive or reactive role? Put differently: Should such a body be connected to the legislature in order to formulate sustainable laws? Or is its responsibility to review whether laws meet the criterion of sustainability, which would seem to suggest that it should be conceptualised similarly to the judiciary?

• Should the sphere of competence of the new fourth branch limit itself only to specific policy areas? If so, which?

• How many members should the fourth branch have and which resources? How long should the terms of office be for members of? Who determines the salaries of the members of the fourth branch? Could members be forced to resign if they are guilty of misconduct?116

• Who could convene and how often? What should an assertive fourth branch - also mapped onto the constitutional level - for a specific country look like?

• To what extent should a fourth branch be conceptualised differently for each country?

• Independent of the formal and legal design of the fourth branch, with its competencies and instruments of power, is there anything else about its general framework which could benefit or a hinder its success? What are they?

Important questions are posed above, which researchers (esp. political scientists, philosophers and law scholars) should consider in the coming years. Its subdiscipline, ‘political theory’, which is considered by many empiricists to be superfluous, is able to fulfil an important function in this regard. This is because it is only partly possible to answer the above questions through empirical and comparative methods - a theoretical and historical approach also offers important orientation, the importance of which should not be discounted.

#### Spills over to broader support for future generations

Graham 17 [Hilary Graham, J. Martin Bland, Richard Cookson, Mona Kanaan, and Piran White -- Department of Health Sciences and Environment Department at the University of York. Do People Favour Policies that Protect Future Generations? Evidence from a British Survey of Adults. Journal of Social Policy, 2017. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D722EA2340DB8139FA2476E00E4612EC/S0047279416000945a.pdf/div-class-title-do-people-favour-policies-that-protect-future-generations-evidence-from-a-british-survey-of-adults-div.pdf]

How to represent the interests of future generations in policy decision-making has long been recognised as a central challenge of policy evaluation. The accelerating pace of environmental and climate change is adding urgency to this issue (Steffen et al., 2011; Stern, 2006).

Our study of adults in Britain raises questions about a core assumption underpinning standard policy evaluation: that people prefer policies that most benefit their generation. The study points, instead, to a strong preference for policies bringing greater benefit to the generations that follow. These findings accord with sociological evidence that concern for future generations is among the values that many people hold in common.

An appeal to common values has been identified as important in securing public support for policies to address ‘bigger-than-self challenges like improving health and tackling environmental and climate change (Crompton, 2010). Such an appeal underpins a series of landmark reports on environmental and climate change, including the Brundtland Commission (UN, 1987), the Stern Report (2006) and the Lancet Commission on planetary health (Whitmee et al, 2015). Presenting policy challenges in ways that connect with positive emotions, like hope, care, compassion and pride, is seen to help activate public engagement (Markowitz and Shariff, 2012). Again, a commitment to future generations does this: it is a commitment anchored in these emotions. Understanding more about this commitment could help community organisations and governments build public support for future-oriented policies explicitly designed to protect the lives and environments of future generations.

#### Anything short of existential impacts – Russia war and pandemics – are small missteps

Bostrom 7 [Nick Bostrom -- come on, you didn't think we wouldn't read at least one of these, right? The Future of Humanity. 2007. https://nickbostrom.com/papers/future.html]

Extinction risks constitute an especially severe subset of what could go badly wrong for humanity. There are many possible global catastrophes that would cause immense worldwide damage, maybe even the collapse of modern civilization, yet fall short of terminating the human species. An all-out nuclear war between Russia and the United States might be an example of a global catastrophe that would be unlikely to result in extinction. A terrible pandemic with high virulence and 100% mortality rate among infected individuals might be another example: if some groups of humans could successfully quarantine themselves before being exposed, human extinction could be avoided even if, say, 95% or more of the world’s population succumbed. What distinguishes extinction and other existential catastrophes is that a comeback is impossible.

A non-existential disaster causing the breakdown of global civilization is, from the perspective of humanity as a whole, a potentially recoverable setback: a giant massacre for man, a small misstep for mankind.

An existential catastrophe is therefore qualitatively distinct from a “mere” collapse of global civilization, although in terms of our moral and prudential attitudes perhaps we should simply view both as unimaginably bad outcomes.30 One way that civilization collapse could be a significant feature in the larger picture for humanity, however, is if it formed part of a repeating pattern. This takes us to the second family of scenarios: recurrent collapse.

### 1

#### 2) DELAY---even if enforcement orders are ultimately entered, each case takes too long to prosecute---that means remedies come too late to create competition.

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

#### No space war – it’s hype and systems are redundant

Johnson-Freese and Hitchens 16 [Dr. Joan Johnson-Freese is a member of the Breaking Defense Board of Contributors, a Professor of National Security Affairs at the Naval War College and author of Space Warfare in the 21st Century: Arming the Heavens. Views expressed are those of the author alone. Theresa Hitchens is a Senior Research Scholar at the Center for International and Security Studies at Maryland (CISSM), and the former Director of the United Nations Institute for Disarmament Research (UNIDIR) in Geneva, Switzerland. Stop The Fearmongering Over War In Space: The Sky’s Not Falling, Part 1. December 27, 2016. https://breakingdefense.com/2016/12/stop-the-fearmongering-over-war-in-space-the-skys-not-falling-part-1/]

In the last two years, we’ve seen rising hysteria over a future war in space. Fanning the flames are not only dire assessments from the US military, but also breathless coverage from a cooperative and credulous press. This reporting doesn’t only muddy public debate over whether we really need expensive systems. It could also become a self-fulfilling prophecy. The irony is that nothing makes the currently slim possibility of war in space more likely than fearmongering over the threat of war in space.

Two television programs in the past two years show how egregious this fearmongering can get. In April 2015, the CBS show 60 Minutes ran a segment called “The Battle Above.” In an interview with General John Hyten, the then-chief of U.S. Air Force Space Command, it came across loud and clear that the United States was being forced to prepare for a battle in space — specifically against China — that it really didn’t want.

It was explained by Hyten and other guests that China is building a considerable amount of hardware and accumulating significant know-how regarding space, all threatening to space assets Americans depend on every day. If viewers weren’t frightened after watching the segment, it wasn’t for lack of trying on the part of CBS.

Using terms like “offensive counterspace” as a 1984 NewSpeak euphemism for “weapons,” it was made clear that the United States had no choice but to spend billions of dollars on offensive counterspace technology to not just thwart the Chinese threat, but control and dominate space. While it didn’t actually distort facts — just omit facts about current U.S. space capabilities — the segment was basically a cost-free commercial for the military-industrial complex.

In retrospect though, “The Battle Above” was pretty good compared to CNN’s recent special, War in Space: The Next Battlefield. The latter might as well have been called Sharknado in Space – because the only far-out weapons technology our potential adversaries don’t have, according to the broadcast, seems to be “sharks with frickin’ laser beams attached to their heads!”

First, CNN needs to hire some fact checkers. Saying “unlike its adversaries, the U.S. has not yet weaponized space” is deeply misleading, like saying “unlike his political opponents, President-Elect Donald Trump has not sprouted wings and flown away”: A few (admittedly alarming) weapons tests aside, no country in the world has yet weaponized space. Contrary to CNN, stock market transactions are not timed nor synchronized through GPS, but a closed system. Cruise missiles can find their targets even without GPS, because they have both GPS and precision inertial measurement units onboard, and IMUs don’t rely on satellite data. Oh, and the British rock group Pink Floyd holds the only claim to the Dark Side of the Moon: There is a “far side” of the Moon — the side always turned away from the Earth — but not a “dark side” — which would be a side always turned away from the Sun.

More nefariously, the segment sensationalized nuggets of truth within a barrage of half-truths, backed by a heavy bass, dramatic soundtrack (and gravelly-voiced reporter Jim Sciutto) and accompanied by sexy and scary visuals.

Make no mistake there are dangers in space, and the United States has the most to lose if space assets are lost. The question is how best to protect them. Here are a few facts CNN omitted.

The Reality

The U.S. has all of the technologies described on the CNN segment and deemed potentially offensive: maneuverable satellites, nano-satellites, lasers, jamming capabilities, robotic arms, ballistic missiles that can be used as anti-satellite weapons, etc. In fact, the United States is more technologically advanced than other countries in both military and commercial space.

That technological superiority scares other countries; just as the U.S. military space community is scared of other countries obtaining those technologies in the future. The U.S. military space budget is more than 10 times greater than that of all the countries in the world combined. That also causes other countries concern.

More unsettling still, the United States has long been leery of treaty-based efforts to constrain a potential arms race in outer space, as supported by nearly every other country in the world for decades. Indeed, under the administration of George W. Bush, the U.S. talking points centered on the mantra “there is no arms race in outer space,” so there is no need for diplomat instruments to constrain one. Now, a decade later, the U.S. military – backed by the Intelligence Community which operates the nation’s spy satellites – seems to be shouting to the rooftops that the United States is in danger of losing the space arms race already begun by its potential adversaries. The underlying assumption — a convenient one for advocates of more military spending — is that now there is nothing that diplomacy can do.

However, it must be remembered that most space-related technologies – with the exception of ballistic missiles and dedicated jammers – have both military and civil/commercial uses; both benign — indeed, helpful — and nefarious uses. For example, giving satellites the ability to maneuver on orbit can allow useful inspections of ailing satellites and possibly even repairs.

Further, the United States is not unable to protect its satellites, as repeated during the CNN broadcast by various interviewees and the host. Many U.S. government-owned satellites, including precious spy satellites, have capabilities to maneuver. Many are hardened against electro-magnetic pulse, sport “shutters” to protect optical “eyes” from solar flares and lasers, and use radio frequency hopping to resist jamming.

Offensive weapons, deployed on the ground to attack satellites, or in space, are not a silver bullet. To the contrary, U.S. deployment of such weapons may actually be detrimental to U.S. and international security in space (as we argued in a recent Atlantic Council publication, Towards a New National Security Space Strategy). Further, there are benefits to efforts started by the Obama Administration to find diplomatic tools to restrain and constrain dangerous military activities in space.

These diplomatic efforts, however, would be undercut by a full-out U.S. pursuit of “space dominance.” This includes dialogue with China, the lack of which Gen. William Shelton, retired commander of Air Force Space Command, lamented in the CNN report.

Given CNN’s “cast,” the spin was not surprising. Starting with Ghost Fleet author Peter Singer set the sensationalist tone, which never altered. The apocalyptic opening, inspired by Ghost Fleet, posited a scenario where all U.S. satellites are taken off-line in nearly one fell swoop. Unless we are talking about an alien invasion, that scenario is nigh on impossible. No potential adversary has such capabilities, nor will they ever likely do so. There is just too much redundancy in the system.

# 1NR

### 2

#### Russia says no – doubt US commitment and don’t like impulsive agreements – won’t cooperate so no spillover

Malygina 18 [Dr. Anastasiya Malygina is an associate professor at the School of International Relations at St. Petersburg State University. The Future of U.S.-Russia Arms Control, Transparency, and Confidence Building. February 23, 2018. https://csis-prod.s3.amazonaws.com/s3fs-public/180508\_Malygina\_FutureUSRussiaArmsControl.pdf?8xe.JOuSxy.M3rsmjjMVoJWsVLDAlrKZ]

The third tendency is Russia's concern about the lack of consistency in U.S. arms-control and nonproliferation policy. Russia is not sure that reaching an agreement would guarantee long-lasting U.S. compliance with the provisions. The most recent example here is the uncertain future of the Joint Comprehensive Plan of Action (JCPOA).

Fourthly, the current lack of dialogue about the evidence underlying judgments regarding complex nonproliferation and other security issues creates the perception that the U.S. prefers to act unilaterally and impulsively. Russia is concerned that the standards for arms control, disarmament, and nonproliferation procedures are not clear and reliable. Russia is concerned that impulsive solutions made without carefully weighing all available evidence may undermine the foundation of global nonproliferation regimes.

#### Requires arms control

Howard 18—(editor of Disarmament Diplomacy and Adjunct Professor of Political Science at the University College of Cape Breton, Canada). Sean Howard. 8-10-2018. "Nanotechnology and Mass Destruction: The Need for an Inner Space Treaty." Pari Center. <https://paricenter.com/nanotechnology-and-mass-destruction-the-need-for-an-inner-space-treaty/>.

This article assesses concerns about the potential development of new weapons and risks of mass destruction made possible by nanotechnology – the rapidly evolving field of atomic and molecular engineering.1 It will argue that such concerns are valid and will need to be addressed by the international arms control and non-proliferation regime. The paper concludes with an appeal for such an engagement to begin sooner rather than later. Weapons of mass destruction (WMD) are already banned from outer space under the terms of the 1967 Outer Space Treaty. Before long, there may be need for an ‘inner space’ treaty to protect the planet from devastation caused – accidentally, or by terrorists, or in open conflict – by artificial atomic and molecular structures capable of destroying environments and life forms from within. The Nanotechnology Revolution Nanotechnology is defined in the Oxford English Dictionary as “the branch of technology that deals with dimensions and tolerances of less than 100 nanometres, esp. the manipulation of individual atoms and molecules.” A nanometre is one billionth (one-thousand millionth) of a metre. Although the potential of atomic engineering on the scale of 1-100 nanometres was foreseen for decades, most famously in a 1959 lecture by the US physicist Richard Feynman,2 serious research was only made possible in the 1980s, primarily through the ability of a new microscope – the scanning tunnelling microscope (STM) – to ‘click’ and ‘drag’ on individual atoms.3 Numerous universities in North America, Europe and Asia quickly established teams to investigate the possibilities of the new research. By January 2000, the US government had become sufficiently impressed with the early results to launch a National Nanotechnology Initiative (NNI)4, with initial funding of $497 million. While other governments are also investing in a range of nanotechnology research5, the US effort is by far the most substantial – and hyped. Launching the programme, President Bill Clinton enthused: “Imagine the possibilities: materials with ten times the strength of steel and only a small fraction of the weight; shrinking all the information housed at the Library of Congress into a device the size of a sugar cube; detecting cancerous tumors when they are only a few cells in size. Some of our research goals may take 20 or more years to achieve, but that is precisely why there is an important role for the federal government.”6 A White House Fact Sheet – entitled ‘National Nanotechnology Initiative: Leading to the Next Industrial Revolution’ – virtually salivated over the prospect of an atomically re-designed world: “The emerging fields of nanoscience and nanoengineering – the ability to manipulate and move matter – are leading to unprecedented understanding and control over the fundamental building blocks of all physical things. These developments are likely to change the way almost everything – from vaccines to computers to automobile tires to objects not yet imagined – is designed and made. … Nanotechnology is the builder’s new frontier and its potential impact is compelling: this Initiative establishes Grand Challenges to fund interdisciplinary research and education teams…that work for major, long-term objectives.”7 The Bush administration’s first NNI budget request, for FY 2002, was for $518.9 million, increased by Congress to $604.4 million. The request for the coming fiscal year is $679 million. The range of US government partners involved reflects the technology’s potential breadth of application.8 The second largest recipient is the Department of Defense, with $180 million of funding dedicated to elaborating a “conceptual template for achieving new levels of warfighting effectiveness” reflecting “the increasingly critical nature of technological advances”.9 None of the funding is currently earmarked specifically for developing new weapons. Studies are, however, already underway (e.g. the research on new types of armour, considered below) and likely to be undertaken to assess the kind of nanotechnological systems which US forces may confront, or equip themselves with, in the future. Such weapons, at least in principle, could include WMD, either in terms of entirely new means of mass destruction, or nanotechnological enhancements to existing WMD. The incentive for an adversary to pursue the military application of atomic engineering – either on a battlefield or on a massively destructive scale – may, ironically, be increased by the evident enthusiasm of the US military for the new possibilities. As with other advanced technologies, the defensive and offensive utility of nanotechnology is hard to distinguish; from an adversary’s point of view, it may even be dangerous to try. Here, for instance, is a recent news story on ‘nanoarmour’ for US troops: “The Massachusetts Institute of Technology plans to create military uniforms that can block out biological weapons and even heal their wearers as part of a five-year contract to develop nanotechnology applications for soldiers, the US Army announced… MIT won the $50 million contract to create an Institute for Soldier Nanotechnologies, or ISN. The ISN will be staffed by around 150 people, including 35 MIT professors… The unique lightweight materials that can be composed using nanotechnology will possess revolutionary qualities that MIT says will help it make a molecular ‘exoskeleton’ for soldiers. The ISN plans to research ideas for a soft – and almost invisible – clothing that can solidify into a medical cast when a soldier is injured or a ‘forearm karate glove’ for combat, MIT said. Researchers also hope to develop a kind of molecular chain mail that can deflect bullets. In addition to protecting soldiers, these radically different materials will have uses in offensive tactics, at least psychologically. ‘Imagine the psychological impact upon a foe when encountering squads of seemingly invincible warriors protected by armour and endowed with superhuman capabilities, such as the ability to leap over 20-foot walls,’ ISN director Ned Thomas said in a release.”10 Imagine, one might add, the psychological impact on people around the world, first of realising that such a dramatic extension of militarisation into the nanosphere is beginning, then of wondering where such a process might end. Why stop at armour, short of new weapons – and, if it does lead to new weapons, what on earth will they be? Fact and Fiction Nanotechnology has become firmly established as a subject of popular interest, largely through visions of a ‘return to Eden’, and even an escape from mortality, offered in countless science fiction novels, films and television series, and a number of best-selling science books, prominent among them Engines of Creation by K. Eric Drexler and The Age of Spiritual Machines by Ray Kurzweil. Such works are generally derided by professional nanotechnologists, keen to caution against inflated expectations and thus possible disillusionment on the part of governments, funders and industry. Even the vision of nanotechnology purveyed by such professionals, however, is replete with expressions of confidence in its long-term capacity to transform the modern world – for the better, of course. In September 2001 – a month synonymous with the destructive misuse of modern technology – Scientific American published a special issue on progress and prospects in the new ‘science of the small’. The issue, featuring articles from prominent nanotechnology advocates and practitioners, differing only in the intensity of their enthusiasm, outlines developments in four main areas of research: computer circuitry11, new construction ‘supermaterials’12, medical diagnostic and therapeutic applications13, and ‘nanorobotics’14. All these areas overlap, just as nanotechnology itself merges with two other ‘frontier’ disciplines, genetic engineering and robotics. More grandly, nanotechnology is viewed as a potentially significant step toward the ‘unification’ – at least in terms of a central research and development agenda – of physics, chemistry and biology. As the introduction to the special issue of Scientific American, entitled ‘Megabucks for Nanotech’, noted: “Because the development of tools and techniques for characterising and building nanostructures may have far-reaching applicability across all sciences, nanotechnology could serve as a rallying point for physicists, chemists and biologists.” But does this allure mean scientists are more or less likely to be wary of the potential for harm their work may entail? What ‘far-reaching applicability’ could ‘nanostructures’ have for repressive governments, high-tech militaries, or terrorist organisations? The dark side of nanoscale engineering has long been acknowledged outside the laboratory, both in works of science fiction and by prominent evangelists for the new faith, some of whom (see below) have suggested safeguards and protections. The extent or even existence of the threat, however, has been largely ignored or discounted in the official decisions and statements of governments, funders, industry and academe. This in turn adds to the difficulty of seeking to persuade the overstretched and under-resourced arms control diplomatic community to begin to consider its possible interest in the subject. In the wake of September 11, however, a serious reappraisal of official attitudes toward nanotechnology is urgently required. The assumption, perhaps held most deeply in the US, is that nanotechnology can and should be enlisted in the campaign against terrorism, and that the risk of misuse is far outweighed by the likely gains. But to what extent is this more than an assumption? Nanotechnology and Mass Destruction: an Overview of the Current Debate Processes of self-replication, self-repair and self-assembly are an important goal of mainstream nanotechnological research. Either accidentally or by design, precisely such processes could act to rapidly and drastically alter environments, structures and living beings from within. In extremis, such alteration could develop into a ‘doomsday scenario’, the nanotechnological equivalent of a nuclear chain-reaction – an uncontrollable, exponential, self-replicating proliferation of ‘nanodevices’ chewing up the atmosphere, poisoning the oceans, etc. While accidental mass-destruction, even global destruction, is generally regarded as unlikely -equivalent to fears that a nuclear explosion could ignite the atmosphere, a prospect seriously investigated during the Manhattan Project – a deliberately malicious programming of nanosystems, with devastating results, seems hard to rule out. As Ray Kurzweil points out, if the potential for atomic self-replication is a pipedream, so is nanotechnology, but if the potential is real, so is the risk: “Without self-replication, nanotechnology is neither practical nor economically feasible. And therein lies the rub. What happens if a little software problem (inadvertent or otherwise) fails to halt the self-replication? We may have more nanobots than we want. They could eat up everything in sight. … I believe that it will be possible to engineer self-replicating nanobots in such a way that an inadvertent, undesired population explosion would be unlikely. … But the bigger danger is the intentional hostile use of nanotechnology. Once the basic technology is available, it would not be difficult to adapt it as an instrument of war or terrorism. … Nuclear weapons, for all their destructive potential, are at least relatively local in their effects. The self-replicating nature of nanotechnology makes it a far greater danger.”15 Assuming replication will prove feasible, K. Eric Drexler also assumes the worst is possible: “Replicators can be more potent than nuclear weapons: to devastate Earth with bombs would require masses of exotic hardware and rare isotopes, but to destroy life with replicators would require only a single speck made of ordinary elements. Replicators give nuclear war some company as a potential cause of extinction, giving a broader context to extinction as a moral concern.”16 There are, of course, multiple levels of concern below that of a final apocalypse. Use and abuse are, unavoidably, the twins born of controlled replication. Nanosystems proliferating in a precisely controlled and pre-programmed manner to destroy cancerous cells, or deliver medicines, or repair contaminated environments, can also be ‘set’ to destroy, poison and pollute.17 The chain reactions involved in thermonuclear explosions are precise and controlled, as much or more than the dosages in chemotherapy treatment. In the science of atomic engineering, the very technologies deployed to allay concerns of apocalyptic malfunction loom as the likely source of functional mass destruction. Notwithstanding their vividly expressed concerns, both Kurzweil and Drexler portray the risk of mass- or global-destruction as a containable, preventable problem – provided nanotechnology is pursued as vigorously as possible in order to understand the real risks. In April 2000, however, an article in Wired magazine by Bill Joy, a leading computer scientist and co-founder of Sun Microsystems, painted a far bleaker picture: “Accustomed to living with almost routine scientific breakthroughs, we have yet to come to terms with the fact that the most compelling 21st-century technologies – robotics, genetic engineering, and nanotechnology – pose a different threat than the technologies that have come before. … What was different in the 20th Century? Certainly, the technologies underlying the weapons of mass destruction – nuclear, biological, and chemical – were powerful, and the weapons an enormous threat. But building nuclear weapons required, at least for a time, access to both rare…raw materials and highly protected information; biological and chemical weapons programs also tended to require large-scale activities. The 21st century technologies…are so powerful that they can spawn whole new classes of accidents and abuses. Most dangerously, for the first time, these accidents and abuses are widely within the reach of individuals or small groups. … Thus we have the possibility not just of weapons of mass destruction but of knowledge-enabled mass destruction (KMD), this destructiveness hugely amplified by the power of self-replication.”18 Joy identifies and addresses two key issues: if the danger is so great, 1) why hasn’t the warning been adequately sounded before now, and 2) what can be done to avoid the abyss? His answer to the first question19 is shocking and, given his own commercial success, confessional: “In truth, we have had in hand for years clear warnings of the dangers inherent in widespread knowledge of GNR [genetics, nanotechnology and robotics] technologies – of the possibility of knowledge alone enabling mass destruction. But these warnings haven’t been widely publicized; the public discussions have been clearly inadequate. There is no profit in publicizing the dangers. … In this age of triumphant commercialism, technology…is delivering a series of almost magical inventions that are the most phenomenally lucrative ever seen. We are aggressively pursuing the promises of these new technologies within the now-unchallenged system of global capitalism and its manifold financial incentives and competitive pressures.” In seeking ways back from the brink, Joy’s starting point is the folly of distinguishing between military and non-military – or, more broadly, ‘good’ and ‘bad’ – nanotechnology. There is, of course, a distinction between malicious and benign intent, but the difference does not affect the inherently dangerous and/or uncontrollable nature of atomic fabrication and engineering. In view of the vast promise, both financial and scientific, involved, the tendency is to seek a technological fix, a nanotechnological equivalent to a missile defence system, to ward off any demons the same technology may conjure up. In dismissing this option, Joy draws the only remaining conclusion available: “In Engines of Creation, Eric Drexler proposed that we build an active nanotechnological shield – a form of immune system for the biosphere – to defend against dangerous replicators of all kinds that might escape from laboratories or otherwise be maliciously created. But the shield he proposed would itself be extremely dangerous – nothing could prevent it from developing autoimmune problems and attacking the biosphere itself. Similar difficulties apply to the construction of shields against robotics and genetic engineering. These technologies are too powerful to be shielded against in the time frame of interest; even if it were possible to implement defensive shields, the side effects of their development would be at least as dangerous as the technologies we are trying to protect against. These possibilities are all thus either undesirable or unachievable or both. The only realistic alternative I see is relinquishment: to limit development of the technologies that are too dangerous, by limiting our pursuit of certain kinds of knowledge.” As he doubtless expected, Joy’s article was widely portrayed by nanotechnology enthusiasts and practitioners as Luddite exaggeration bordering on unmanly hysteria. Gary Stix, special projects editor at Scientific American, noted scornfully that “the danger comes when intelligent people” take “predictions” of nanotechnological catastrophe “at face value”. A “morose Bill Joy”, Stix wrote, had “worried…about the implications of nanorobots that could multiply uncontrollably. A spreading mass of self-replicating robots – what Drexler has labelled ‘gray goo’ – could pose enough of a threat to society, he mused, that we should consider stopping development of nanotechnology. But that suggestion diverts attention from the real nano goo: chemical and biological weapons.”20 This parodies Joy’s article, however, which considers a range of negative consequences potentially flowing from the basic fact of the nanotechnology revolution, namely that the “replicating and evolving processes that have been confined to the natural world are about to become realms of human endeavour”.21 That we may not be eaten by ‘gray goo’ does not mean we should ignore other dire prospects. As for the ‘real nano goo’, Joy sees in nanotechnology the potential to dramatically enhance the mass-destructive capacity of chemical and, particularly, biological weapons, in a manner akin perhaps to the qualitative leap from atomic to thermonuclear weapons. It is precisely in the CBW area that nanotechnology is likely to pose its first major arms control challenge. The analogy with the development of thermonuclear weapons is also instructive in the context of the possible abandonment of a field of scientific work – however uncharted and challenging the territory – on moral grounds, or out of fear of the total destruction which may follow. In 1949, the scientific General Advisory Committee (GAC) of the US Atomic Energy Commission (AEC) drew up a report on the possible development of hydrogen bombs by the United States military. The general report, adopted by eight physicists including the scientific director of the Manhattan Project, Robert Oppenheimer, stumbled on the verge of recommending that the attempt not be made: “It is clear that the use of this weapon would bring about the destruction of innumerable human lives… Its use…carries much further than the atomic bomb itself the policy of exterminating civilian populations. … We all hope that by one means or another, the development of these weapons can be avoided.” A supporting document, however, submitted by I.I. Rabi and Enrico Fermi, took the final step. The destructive capacity of the hydrogen bomb, they argued, “makes its very existence and the knowledge of its construction a danger to humanity as a whole. It is necessarily an evil thing considered in any light.”22 So, for Joy, is nanotechnology. For most scientists, however, the case is rather that of physicists in the 1930s, aware but sceptical of the prospect of the large-scale release of energy from the atomic nucleus23, but almost without exception committed to exploring the exciting new world, and professional opportunities, opened up by quantum mechanics.24Even after the discovery of fission in 1938, many prominent physicists, including Niels Bohr25, were extremely dubious that a practical, deliverable weapon could be built. The thing to do was to press on, work hard to make sure of the facts, and hope the bomb would prove impossible. Part of the motivation for pressing on, of course, was fear of Hitler getting the bomb first. But, assuming the risks of nanotechnological mass destruction became more widely accepted, what would the comparable fear be today? Pre-eminently, terrorism. Terrorists, however, can only hope to acquire new means of mass destruction in the same way they pursue nuclear, chemical and biological WMD – by pilfering and diverting from a highly-developed knowledge-base and infrastructure. In Joy’s view, precisely such a ‘gift’ is presently being assembled and wrapped, generously funded and uncritically supported, and in the almost complete absence of mainstream political or wider democratic scrutiny or participation. ‘We’ are sowing the wind we all may reap. Options for an Inner Space Treaty There are two basic options for designing a possible arms control approach to the mass-destructive potential of nanotechnology. Both, of course, will be stillborn in the absence of a recognition by government, business and science – the ‘strategic triad’ of contemporary decision-making – that serious dangers exist. Such initial pressure for action cannot realistically be expected to come from within the structurally reactive and reflective arms control diplomatic community. Let us assume, however, that growing public concern and increasingly troubling scientific results combine to push the issue onto a future agenda. We are immediately confronted with a decisive choice, so familiar to followers of myriad disarmament and non-proliferation discussions: what is our goal, abolition or regulation? Is the fundamental danger what ‘others’ might do with ‘our’ technology, or is the real problem the technology itself? It is possible to construct an arms control regime based on the logic of either conclusion; but it is not possible to merge both approaches. Given the huge investment now flowing into nanotechnology, allied to the vast practical and financial gains on offer and the correspondingly large numbers of scientists likely to be employed in the new field, the probability is that a regime of control and restraint will acquire a compelling logic, banishing the ‘chimera’ of abolition to the shadows. If so, a rough transposition of the Outer Space Treaty – allowing only for obvious changes of reference and context – could quickly yield the broad brush parameters of an Inner Space Treaty seeking to ensure the peaceful exploitation, rather than the non-exploitation, of the nanosphere. (See the Appendix – ‘Version A: Treaty on Principles Governing the Nanotechnological Activities of States in Inner (Atomic and Molecular) Space’ – for a tentative sketch of an accord along these basic lines.) Such a treaty would mark a giant political leap forward from today’s effectively unregulated mass of governmental, academic and commercial projects. The critical issue would then become one of effective practical implementation. How, for example, could the nature, scope, intention and possible application of inner-space research be ascertained and verified? How would violations be detected and transgressors corrected? Where would the line be drawn, and by whom, between defensive and offensive military nanotechnology? How could adequate monitoring and inspection of commercial nanotechnology be reconciled with the demands of competitiveness and confidentiality?

#### OST isnt enforced

Bahney and Pearl 19 [Benjamin Bahney And Jonathan Pearl are Senior Fellows at the Lawrence Livermore National Laboratory’s Center for Global Security Research and contributing authors to Cross Domain Deterrence: Strategy in an Era of Complexity. Why Creating a Space Force Changes Nothing. March 26, 2019. https://www.foreignaffairs.com/articles/space/2019-03-26/why-creating-space-force-changes-nothing]

WHY TREATIES WON’T WORK

As Russia and China continue to push forward, U.S. policymakers may be tempted to use treaties and diplomacy to head off their efforts entirely. This option, although alluring on paper, is simply not feasible. Existing treaties designed to limit military competition in space have had little success in actually doing so. The 1967 Outer Space Treaty bans parties from placing nuclear weapons or other weapons of mass destruction in space, on the moon, or on other celestial bodies, but it has no formal mechanism for verifying compliance, and places no restrictions on the development or deployment in space of conventional antisatellite weapons.

### FTC DA

#### Market collusion shocks domestic energy production

**Gray 20** [Mr. Gray has served as White House counsel, U.S. ambassador to the European Union, and as U.S. special envoy to Europe for Eurasian energy, “Banks' Energy Boycott Is an Antitrust Problem,” 15 July 2020, The Wall Street Journal, Factiva]

America's largest financial institutions are picking winners and losers in the energy sector for political reasons -- even while the Covid-19 crisis has reduced global oil demand and a price war between Russia and Saudi Arabia has flooded global markets with crude. Under pressure from environmental activists, banks are withholding desperately needed capital from oil and gas companies. In doing so, they put millions of jobs at risk and may even be violating federal antitrust law.

To protect consumers, antitrust laws prohibit unreasonable agreements in restraint of trade. Anticompetitive conduct enriches the few -- members of the cartel -- at the expense of everyone else, especially the consumers who end up paying higher prices. Agreements among competitors to fix prices, divide markets or engage in certain forms of group boycott prevent competition and are therefore illegal.

Normally, banks compete to lend to corporate customers. That competition ensures that worthwhile projects can gain access to capital and use it to bring products to consumers at affordable prices. But Citibank, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo have started moving in parallel to cut off liquidity and capital to America's energy sector. More specifically, these ostensible competitors have announced promises to stop lending money in support of Arctic oil drilling and coal mining.

BlackRock, the world's largest investment firm, announced in January that it would divest from companies deriving more than 25% of their revenue from thermal coal and has joined a pact called "Climate Action 100+" with more than 450 global investors. "Banks are increasingly using environmental, social and governance factors when underwriting corporate borrowing," Barron's reports, such that according to one survey, "half the lending assets covered by 182 banks" were screened for ESG risks.

These announcements look a lot like invitations to collude on a boycott of a critical segment of the U.S. economy. The Federal Trade Commission has maintained that such invitations -- even if they go unheeded -- can violate federal antitrust law. As the FTC and the Department of Justice reiterated in April, "Even absent a collusive agreement," antitrust enforcers may "pursue a civil enforcement action against companies and individuals that invite others to collude." If made with an intent to invite or signal competitors to join a group boycott, these announcements could violate the law.

Federal antitrust law also prohibits boycott agreements instigated by a third party to prod firms that compete with each other into unreasonably restraining market competition. In these "hub and spoke" conspiracies, competitors may violate the law without communicating with each other, and even though the relevant agreements they make are with a third party, not a competitor.

Pressure campaigns by activist groups (possible hubs) -- followed by the pattern of announcements and parallel conduct by banks (possible spokes) -- present more evidence of potential conspiracies. For example, Green America proclaims it "is pressuring banks world-wide to stop funding fossil fuels" as part of the "Fossil Banks, No Thanks" campaign, which aims "to stop large commercial banks from financing the fossil fuel industry." The Sierra Club shares the same goal and even reports that it has "met with representatives from major banks to discuss . . . why action by the financial industry is necessary." As a result, five of the six largest banks in the United States will no longer finance oil and gas drilling in the Arctic National Wildlife Refuge. Bank of America is the lone holdout.

Activist investors have also joined the pressure campaign, encouraged by business leaders' embrace of "stakeholders" over shareholders. Any of this third-party activity could be the hub for tacit collusion between the spokes -- i.e., banks collectively boycotting certain energy projects.

The U.S. does a lot for its banks, which have long been heavily subsidized and backed by government interventions. The Federal Deposit Insurance Corp. guarantees deposits, and other programs have been set up whenever banks face a crisis. The Covid-19 pandemic is no exception: Congress routed its Cares Act relief efforts to businesses through banks, which are rewarded with fat fees. Meanwhile, bank executives are turning their backs on the very companies that keep the lights on.

When America's financial industry starves the energy sector of capital, that isn't fair, free-market competition. It's a subsidized industry barreling toward collusion at the invitation of radical third-party intermediaries -- and inviting billions of dollars in antitrust liability.

#### That causes leadership decline and hot wars

**Lippold 16** [Kirk S. Lippold, President of Lippold Strategies, LLC, a consulting firm that specializes in leadership, crisis management, and national security policy, spent 26 years in the Navy, where he was a Surface Warfare Officer serving on five different ships, including guided missile cruisers and destroyers to protect U.S. national security interests across the globe, “Re: Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018,” July 11, 2016, U.S. Environmental Protection Agency Attention Docket ID No. EPA-HQ-OAR-2016-0004 EPA Docket Center]

Since 2010, the U.S. has undergone a significant energy renaissance in which U.S. production of oil and gas has skyrocketed. Such a rapid rise in natural gas and oil production from shale and other tight oil resources has been brought about by the maturation of hydraulic fracturing, improved detection capabilities, and horizontal extraction technology, as well as newfound access to previously unavailable oil reserves. As a result, the U.S. has become and will continue to be a net exporter of oil. This new reality has altered the fundamental justification for hasty investment in costly and unproven fuels as originally envisioned with the creation of the RFS. In light of this reality, the U.S. should carefully consider whether the RFS should continue to be hailed as a keystone American energy policy. While the RFS had good intentions at its inception, with the current energy production status in the U.S., serious consideration to terminate the program must be considered if it no longer confers the intended national security benefits to the American consumers or our economy.

The U.S. is already the world's largest producer of oil and natural gas combined and is on track to become the world's top oil producer by 2020. The effects of America's renaissance have been to decrease demand for foreign oil, reduce trade imbalances and contribute a whopping 8 percent to the total U.S. GDP. The true scope of growth in American energy resources cannot be overstated. Notably, the non-partisan Congressional Budget Office (CBO) explains that the U.S. now produces approximately 3.5 million barrels of tight oil per day and about 9.5 trillion cubic feet of shale gas per year. It too expects that there will be increasing levels of production - with attendant profound market and economic effects - in the years to come. In April 2015, U.S. oil production reached its highest level in 45 years, hitting 9.7 million barrels per day. Large production volumes are being generated by new oil and gas discoveries in Texas, North and South Dakota and Pennsylvania. Against this new economic backdrop, no longer are costly fuels needed to effectively secure American energy independence. The U.S. would instead benefit from consolidating and building upon the energy resurgence in its efforts to preserve and stabilize the international order.

Such a consolidation allows the U.S. to share our newfound wealth of resources with other nations, thereby allowing the U.S. to exert greater influence on the world stage. No longer must the U.S. be fully subject to the whims of unstable or hostile international actors, but it can credibly marshal and exert energy diplomacy in a manner that directly contributes to greater global security. The U.S. can also indirectly gain influence at the expense of our competitors by 'offsetting' their oil exports with our own.

#### US energy dominance solves Russia, China and Middle East war

**Ladislaw 19** [Sarah Ladislaw is senior vice president and director and senior fellow of the Energy Security and Climate Change Program, where she leads CSIS’s work in energy policy, market, and technology analysis, Nikos Tsafos is a senior fellow with the Energy Security and Climate Change Program at the Center for Strategic and International Studies, “Energy Spheres of Influence,” September 13, 2019, <https://www.csis.org/analysis/energy-spheres-influence#:~:text=Influence%20is%20a%20multifaceted%20and,because%20we%20assume%20it%20does>]

For several decades, energy security has been defined and pursued in a multilateral world with relatively open markets and technology transfer, where energy relations have become increasingly commodified. But that world may soon disappear—energy relationships might become more political, open trade might give way to friction, and great powers might leverage energy relations or energy technology to gain an edge over each other. For decades the United States has promoted a rules-based, multilateral order, supported by shared gains from free trade and deeper economic and political integration within and among countries. Energy security, the ability to secure affordable and reliable supplies of energy, has been widely recognized as common good promoted by this system. As the world’s largest consumer and importer of energy, it was squarely in the United States’ national interest to support this approach through domestic and international energy policy as well as foreign policy. Today, this multilateral order is being challenged. The world is experiencing a new era of competition for greater geographic and economic power driven by the shifting center of gravity of the global economy, the realignment of relationships between and among countries, and rapid technological change. Energy is poised to play an important role in this upheaval and will be affected by these changes. The United States is no longer the largest consumer or importer of energy. Instead, it is now the largest producer of oil and natural gas and will soon be a net exporter of energy. The energy world also is changing rapidly, with renewable energy resources like solar and wind making up the fastest growing and largest source of new supplies and global imperatives like climate change challenging the role of status quo fuels. These changes have heralded a reexamination of the United States’ national interest regarding energy in this changing global system. The United States has important decisions to make about its position in this new environment. Can energy play an influential role in achieving U.S. foreign policy objectives in various regions of renewed geopolitical competition? Is any country or group of countries poised to dominate a given energy market or fuel and might that negatively affect U.S. national security interests? How does this changing global dynamic in which countries are vying for greater geographic and economic spheres of influence affect our approach to global energy security? Will the energy sector become fundamentally more mercantilist, and will the United States be competitive if it does? Greater insight about each of these questions is a prerequisite to the formulation of U.S. foreign and energy policy. So far, the United States has grappled with these questions by pursuing “energy dominance,” a strategy in which energy represents (1) a tool for gaining geopolitical influence in a given region and (2) an area of competitive and strategic economic advantage for the United States. But other global powers, like China and Russia, pose strong competition for this U.S. strategy. Energy features prominently in the economic, foreign, and national security strategies of all three countries but in different ways. And although all three recognize the importance of maintaining affordable and reliable energy supplies for the good of the global economy as well as their own economic well-being, they also recognize the influence of energy in the execution of foreign policy at the global and regional level. The issue for the international energy community is whether the multilateral approach to shared energy security, supported by the promotion of free and integrated markets, is breaking down into regional and economic spheres of influence more mercantile in nature—and if so, how the United States should respond. Shifting Balance of Power Power structures within and among nation-states are shifting. A decade ago, Zbigniew Brzezinski foreshadowed the upheaval as the result of a “global political awakening” in which “for the first time in history almost all of humanity is politically activated, politically conscious and politically interactive” and the result is a “quest for cultural respect and economic opportunity in a world scarred by memories of colonial or imperial domination.”1 Much of this awakening is enabled by technology, which has connected and informed society in ways previously not possible. Today, this struggle is playing out at multiple levels, including the great power politics of nation-states. In 2016, Henry Kissinger spoke about the nature of the changing world order, saying that for the first time in decades: “Practically all the actors in the Middle East, China, Russia, and to a certain extent Europe are facing major strategic decisions. . . . to settle some fundamental directions of their policies. China, about the nature of its place in the world. Russia, about the goals of its confrontations. Europe, about its purpose, through a series of elections. America, about giving a meaning to its current turmoil in the aftermath of the election.”2 The balance of power is shifting, the global order is being renegotiated. The culmination of both has led to an era of intense competition. Within countries, political competition has brought new parties to power. Widespread displeasure over inequality and an unlevel playing field threaten to disrupt the global trading regime and have led to intensified economic competition among firms and strategic economic competition among states. The advent of new technological horizons and the rise of developing countries have sparked new frontiers of competition. Against this backdrop, great powers are looking to expand their reach and refresh their strategies to achieve geostrategic gains. As countries look to expand their spheres of influence, energy can play a role as both a target and tool of that expansion. Although much of the world’s energy development and trade occurs in the sphere of normal commerce, energy infrastructure, investment, and control over resources can also play a role in establishing or challenging the relationships between and among countries. For the first time since the end of the Cold War, there is genuine strategic rivalry among the world’s great powers. China’s rise has created a web of economic and political relationships in all continents. Russia is reasserting itself in places from which it had retreated. The United States is aggressively renegotiating its existing relationships with allies and adversaries. New areas of strategic competition have opened up in resource-rich areas like the Arctic and the emerging economies of Africa.

#### Energy crisis causes nuke war

Holstein ’20 [Alex; 2020; Managing Partner at Holstein-Gray, M.Sc. in Russian and Post-Soviet Studies from the London School of Economics; Geopolitical Monitor, “Invisible Warfare: NATO and the Geopolitical Storm on the Market Economy Horizon,” <https://www.geopoliticalmonitor.com/invisible-warfare-nato-and-the-geopolitical-storm-on-the-market-economy-horizon/>]

But before we even get to that very worst of the worst-case scenarios of a direct collision between a NATO ally and Russia, even the slightest escalation in the region, considering its vital energy resources, could have a devastating impact on global markets, which in itself would kick off a wave of instability and eventual warfare.

As market economies evolve and integrate by engaging commerce and leveraging technology, the blend between national security and socio-economic imperatives becomes even more prescient. This carries with it both advantages and disadvantages. Traditionally, NATO military forces have relied on critical civilian infrastructure such as communications, food and water, industrial capacity, civil transport and energy supplies to conduct operations. The additional rise of non-kinetic asymmetric threats – cyberwarfare, information warfare, EMP attack – against non-traditional targets, such as banks or major multinational corporations that comprise key components of this critical infrastructure, adds an entirely new dimension to the defense requirements of the 21st century. In addition to dealing with more conventional kinetic threats from traditional and emerging adversaries, NATO must prepare itself for this new era of invisible warfare through deeper strategic cooperation with the private sector and corporate entities.

Great Powers and non-state actors alike can now conduct non-kinetic attacks just as devastating as any nuclear, biological or chemical WMD, resulting in millions of deaths and the mass breakdown of societies, while in turn undermining the doctrine of Mutually Assured Destruction and other deterrents against nuclear war. But even contained instability within specific regions could still disrupt markets on a global scale, whether directly targeting infrastructure or as a knock-on effect of a conventional engagement, as in the case of Nargono-Karabakh and the threat to Europe’s energy supplies. A European energy crisis alone could prove the tipping point toward a wider war, or a societal breakdown, without a single shot fired.

#### FTC’s locked in on energy – Biden push

Atkins 1/19 [Vinson & Elkins LLP. Contributing lawyers: Alden Atkins, Thomas Bohnett, Matthew Jacobs, James Leader Jr., Stacey Nuemann Vu, Jason Powers. “2021 Energy and Chemicals Antitrust Report.” 1/19/22. https://www.jdsupra.com/legalnews/2021-energy-and-chemicals-antitrust-1013011/]

Administration Prioritizes Oil and Gas Merger Enforcement

In July 2021, President Biden issued an Executive Order on Promoting Competition in the American Economy, which aims to enhance competition across dozens of industries in order to “promote the interests of American workers, businesses, and consumers.” As part of that initiative, White House National Economic Council Director Brian Deese issued a letter to the FTC on August 11 raising concerns about “divergences between oil prices and the cost of gasoline at the pump” during the 2021 summer season. Deese urged the FTC to use “all of its available tools to monitor the U.S. gasoline market and address any illegal conduct that might be contributing to price increase for consumers at the pump.” The letter echoed concerns raised in President Biden’s remarks on the Build Back Better Agenda, which asserted that falling oil prices were not correlating to savings for consumers, and also urged OPEC to reverse production cuts that were made during the pandemic to lower prices for consumers.

In response to Director Deese’s letter, FTC Chair Lina Khan issued a letter echoing the White House’s concerns, and also raising the additional concern that the FTC’s “approach to merger review in recent years has enabled significant consolidation,” which may have created “conditions ripe for price coordination and other collusive practices.” The Chair’s letter outlined several specific actions the FTC would take:

• The FTC will seek to “identify additional legal theories to challenge retail fuel station mergers where dominant players are buying up family-run businesses.”

• The FTC will re-examine its approach to merger divestitures, to ensure that they do not encourage further consolidation or enable dominant firms or groups of firms to exercise market power. Khan’s letter said she was “especially interested in ways that large national chains may ‘restore’ higher prices through collusive practices.”

• The FTC will “tak[e] steps to deter unlawful mergers in the oil and gas industry,” including by imposing “prior approval” requirements to deter companies from proposing “illegal mergers” in the first place.

• The FTC will ask staff to “investigate abuses in the franchise market,” with a specific focus on determining “whether the power imbalance favoring large national chains allows them to force their franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.”

In a September blog post, the FTC repeated that it is “redoubling its commitment to police unfair methods of competition in wholesale and retail gasoline and diesel sales.” The post noted the FTC’s concern with posted gasoline prices — particularly when controlled by large national chains with multiple stations in a particular area — which the FTC claims “offer opportunities for retail gasoline chains to signal price changes to their competitors.” It said that “retail fuel chains may use specialized software across their networks to set their own retail prices and monitor competitors.” Chains may attempt to “restore” gas prices in the market by signaling their competitors via a “significant price increase at every single one of a chain’s stations across a city area,” and then monitoring its competitors’ prices to see if they follow the price increase. The post also asserts that FTC staff has “observed common restoration behavior among major chains, leading to a concern that consolidation may have led to a world more conducive to signaling behavior — making restorations more likely to increase prices, and maintain higher levels for longer.” Finally, the post notes that the FTC will scrutinize mergers or consolidation involving larger regional and national chains for their effect on price signaling behavior “wherever the buyer overlaps in any metro area with the seller, even if no local retail fuel station overlaps present concern.” 14 Prior results do not guarantee a similar outcome. President Biden jumped into the fray with his own letter on November 17. This letter, which follows on the earlier correspondence with Chair Khan, notes that the price of unfinished gasoline was down more than five percent in the preceding month, while retail gas prices were up three percent over the same period. It also claims that market capitalizations of the two largest oil and gas companies are on pace to double by end of 2021. While noting that Chair Khan has already directed the FTC staff to investigate mergers more aggressively, the November 17 letter asks Chair Khan to scrutinize the rise in oil and gas prices and urges the FTC to investigate “anti-consumer behavior by oil and gas companies.”

The concerns expressed by the White House and Khan do not appear to be shared by all of the FTC commissioners. In his remarks delivered at Dartmouth College on October 27, 2021, Commissioner Noah Phillips warned that the “reflexive resort to competition themes will lead us, and other policy-makers, to get basic facts wrong — leading to formulating bad policy.” He noted Chair Khan’s response to the White House’s concerns about rising gas prices, and challenged her claim that rising fuel prices were attributable to gas station mergers that involved purchases of familyrun business or power imbalances between large chains and “little guys.” Commissioner Phillips countered that there are “a number of drivers for rising prices at the pump, but nothing I am aware of suggests that mergers are the culprit.” He continued, “at a time when gas prices are at a seven year high, Americans cannot afford for policy to be fashioned on such thin gruel.”

On November 23, the two Republican FTC commissioners, Noah Phillips and Christine Wilson, further expanded on their positions when they jointly released a letter to Director Deese. The Republican Commissioners ask Deese to share with the FTC evidence supporting the president’s assertion that oil and gas companies are acting anticompetitively to the detriment of American consumers. The two reference past allegations by presidents of legal violations related to oil pricing and state that “we are not aware of any in recent memory that have uncovered evidence that laws have been broken.” The letter also states that the rise in oil prices could potentially be attributed to a number of factors, and references past studies by the FTC regarding oil prices.

In light of the president’s November 17 letter to Chair Khan and earlier correspondence, oil and gas companies should expect heightened FTC scrutiny. The Biden administration may be particularly skeptical of acquisitions of smaller local fuel retailers by larger national chains. Moreover, investigations are also taking longer than ever before. Unless the recent changes are a temporary blip on the radar — which the letter suggests is unlikely — large oil and gas companies and their counsel may need to adjust expectations on transaction timing and the range of issues investigated for matters that go before the FTC.

#### Khan’s laser focused on energy enforcement – Biden push

Carroll 12/16 [John D. Carroll, partner in the Sheppard, Mullin, Richter & Hampton LLP Antitrust & Competition Practice Group in the Washington, D.C. office. Thomas Dillickrath, Katie Daw, Sheppard, Mullin, Richter & Hampton LLP, Antitrust Law Blog. “Antitrust Scrutiny Heating Up in Oil and Gas Industries.” 12/16/21. https://www.natlawreview.com/article/antitrust-scrutiny-heating-oil-and-gas-industries]

President Biden recently wrote a letter to FTC Chair Lina Khan urging the Commission to immediately investigate potential anticompetitive behavior in the oil and gas sector. The President noted that gas prices have been rising, while the costs faced by oil and gas companies themselves have decreased. Concerned that the two largest oil and gas companies in the country are set to double their net income over 2019 while the gap between the price of unfinished gasoline and the price at the pump is increasing, he called on the FTC to “bring all of the Commission’s tools to bear if you uncover any wrongdoing.”

Steps Already Taken

The Biden administration has made a previous attempt to direct the FTC’s focus towards the oil and gas industries. At President Biden’s behest, the Director of the National Economic Council, Brian Deese, wrote to Chair Khan on August 11, citing “divergences between oil prices and the cost of gasoline at the pump” and urging the FTC to investigate. Chair Khan responded with a letter of her own, outlining a three point plan to address the administration’s concerns about the cost of gas. First, the FTC would identify additional legal theories to challenge fuel station mergers that involve dominant players in the market acquiring family-run businesses. Second, the FTC “would tak[e] steps to deter unlawful mergers in the oil and gas industry.” The Chair specifically referred to the imposition of prior approval requirements to deter illegal mergers in sectors including retail gas markets. Third, Chair Khan indicated that she would direct staff to investigate abuses in the franchise market, noting that the sale of gasoline at high prices may benefit chains at the expense of franchisee store operations.

President Biden expressed in his November 17th letter that he appreciated the plans to “strengthen oversight of mergers in the oil and gas sector” but that further inquiry is required.

Potential Avenues for Enforcement and Investigation

Given the President’s explicit requests to investigate, participants in the oil and gas industry can expect the FTC to increase scrutiny and enforcement. The FTC may pursue several avenues to execute the President’s agenda.

Investigative Powers: Subpoenas and 6(b) Studies

In the wake of Hurricane Katrina, the FTC expended significant resources under its statutory authority to investigate accusations of price gouging in the gasoline market. The Commission issued subpoenas, also known as “Civil Investigative Demands” (CIDs) to petroleum industry firms and issued requests to retailers under Section 6(b) of the FTC Act. The FTC ultimately concluded in May of 2006 that the pricing was explained by normal market trends.

The FTC may employ similar methods to investigate oil and gas industries now by issuing CIDs and 6(b) orders. Orders issued under 6(b) of the FTC Act function similarly to CIDs and require the recipient to provide information to the FTC in writing, subject to court-ordered compliance. Both can require an organization to turn over company information. 6(b) authority also enables the Commission to conduct wide-ranging studies that do not have specific law enforcement purposes. For example, utilizing its 6(b) power and without an underlying specific law enforcement purpose, the FTC recently launched an inquiry into supply chain disruptions and its impacts on consumers.

Wholesalers, refiners, single-location retailers, pipeline owners and operators, terminal owners, and petroleum marketers could all be issued CIDs or 6(b) requests for information if the FTC seeks to gain a deeper understanding of the gasoline cost problem. This possibility seems more likely given the FTC’s recent willingness to utilize Section 6(b) in other industries, including the investigation into the supply chain shortage. However, 6(b) studies are incredibly exhaustive and time consuming to deploy. The costliness of a 6(b) study could be a barrier.

Increased Merger Scrutiny

The FTC may also increase scrutiny on oil and gas companies by ramping up its focus on mergers within the industry, as Chair Khan indicated it would in her letter to Director Brian Deese. This methodology of increasing merger scrutiny also fits within the FTC’s larger trend of increased merger enforcement across a variety of industries under Chair Khan’s leadership.

There is evidence that increased attention on mergers in the gas and oil sector is already taking place—regulators extended the approval process for at least five oil and gas mergers and acquisitions in the third quarter of 2021 alone. This sort of scrutiny has been rare in the oil and gas sector, in which mergers have, up until recently, largely sailed through the regulatory process. The FTC has not blocked a major oil merger in two decades. It brought only four energy related actions in all of 2020, while the DOJ did not file any merger enforcement actions in the energy sector last year. If the FTC’s enforcements behaviors as of late 2021 continues, we may very well see not only more extended approval processes and issuances of second requests, but perhaps more merger challenges, as well.

Takeaways

Participants in the oil and gas market have enjoyed several decades of flying relatively beneath the notice the antitrust regulatory bodies. Increased antitrust scrutiny of the industry from both the DOJ and FTC has been occurring and likely will increase, with President Biden’s request being just a recent example. As clients consider potential transactions, they would be well-served by seeking advice from experienced antitrust counsel.

#### It’s the priority – now is key

S&P Global Platts 9/3/21 [S&P Global Platts is a provider of energy and commodities information and a source of benchmark price assessments in the physical commodity markets. The business was started with the foundation in 1909 of the magazine National Petroleum News by Warren C. Platt. "New FTC chair Khan not afraid to play hardball with oil, gas industry: Baker Botts." https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/090321-new-ftc-chair-khan-not-afraid-to-play-hardball-with-oil-gas-industry-baker-botts]

US Federal Trade Commission Chair Lina Khan is not pulling any punches with the oil and natural gas sector as she sets out to enforce antitrust law as the youngest person ever to helm the agency, global law firm Baker Botts says.

A 32-year-old former law professor, Khan has made a name for herself as a progressive voice with a get-tough approach to Big Tech's unchecked market power. When asked by the White House to lead the effort to monitor the US gasoline market and "address any illegal conduct that might be contributing to price increases for consumers at the pump," she showed no qualms with extending her aggressive antitrust enforcement philosophy to the oil and gas industry.

Khan "has the energy industry squarely within her sights," a Baker Botts Sept. 1 note to clients asserts. Her "response went far beyond [National Economic Council Director Brian] Deese's straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry."

This additional scrutiny on the sector comes as rising gasoline prices over the summer prompted the White House to wade into oil market dynamics. But further calls for investigations into what is causing divergences between oil prices and the cost of gasoline at the pump are expected if gasoline prices rise in the wake of Hurricane Ida, which slammed into Louisiana Aug. 29 with 150 mph winds and on Sept. 1 brought torrential rain, high winds and flash flooding to the Mid-Atlantic states.

The US Energy Information Administration has reported pre-Labor Day gasoline prices at their highest levels since 2014. US retail gasoline prices on Aug. 30, the Monday before Labor Day weekend, averaged $3.14/gal, a 92 cents/gal, or 41%, rise over the same time in 2020 and a 57 cents/gal, or 22%, increase over the pre-pandemic period in 2019.

Pricing investigations

Whether triggered by Hurricane Ida or other means, "any FTC gas pricing investigation would bring significant discovery burdens for industry participants," Baker Botts said in its note to clients.

The investigation that followed Hurricane Katrina in August 2005 identified more than 105 retailers accused of price gouging, but ultimately uncovered very little evidence of wrongdoing, the law firm said. Instances of higher average gasoline prices were attributed to "other factors, such as regional or local market trends," according to the FTC's post-Katrina May 2006 report.

"This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation," Baker Botts said. "Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden's antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny."

The firm advised industry participants to be prepared for pricing investigations if gasoline prices go up meaningful, with "thorough documentation of the business justifications for any price increases."

Baker Botts also recommended that "parties to proposed transactions, particularly those involving retail fuel outlets, should be prepared to encounter an agency anxious to find issues premised on theories that fall outside of modern antitrust precedent."

Three-step approach

Khan's Aug. 25 letter to Deese expressed concern that existing policies governing oil and gas industry mergers had "enabled significant consolidation, particularly when it comes to retail fuel outlets."

Mandating fuel station divestitures in overlapping markets to remedy anticompetitive deals may have inadvertently "increased consolidation at the national level, creating conditions ripe for price coordination and other collusive practices," she said.

Khan committed to a three-step approach to crackdown on unlawful conduct and potential gaps in FTC oversight.

"First, I will ask that we identify additional legal theories to challenge retail fuel station mergers where dominant players are buying up family-run businesses," she said in the letter. "Second, I will be taking steps to deter unlawful mergers in the oil and gas industry" as the repeated proposal of illegal mergers by retail fuel station chains suggest "the agency's approach has not deterred firms from proposing anticompetitive transactions in the first place. ... Third, I will be asking our staff to investigate abuses in the franchise market."

Khan said she was especially interested in digging into ways large national chains may be able to "'restore' higher prices through collusive practices," and planned to have FTC staff investigate any signs of such conduct.

Further, she said, "We will need to determine whether the power imbalance favoring large national chains allows them to force their franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee's convenience store operations."

Greater scrutiny into mergers, "possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations," Baker Botts said. "All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct."

#### Enforcement – its expensive and time-consuming – the aff is a massive resource drain

Galston & Hendrickson 18 [William, Senior Fellow at the Brookings Institute, served from 1993 to 1995 as Deputy Assistant to President Clinton for Domestic Policy, Saul Stern Professor and Acting Dean at the School of Public Policy, University of Maryland, and Clara, researcher at the Brookings Institution in Washington, D.C. and a freelance reporter for national and local outlets, does PolitiFact fact checking at the Detroit Free Press. “A policy at peace with itself: Antitrust remedies for our concentrated, uncompetitive economy” https://www.brookings.edu/research/a-policy-at-peace-with-itself-antitrust-remedies-for-our-concentrated-uncompetitive-economy/]

Reduce the costs of antitrust enforcement

Enforcing antitrust laws is typically slow and expensive. Individual cases, such as the Justice Department’s Microsoft and AT&T investigations, can last for a decade and consume an outsize share of an agency’s resources. In these circumstances, the government is understandably reluctant to initiate actions against large firms with deep pockets.

Prior to 1974, the rules allowed automatic appeals of district courts’ antitrust decisions to the Supreme Court, bypassing an entire level of appellate review. In light of the enforcement experience since this rule was repealed in 1974, the case for legislation that reinstates this rule is strong. This is particularly true for anti-monopoly cases arising under Section 2 of the Sherman Act. The longer monopoly abuses are allowed to persist, the more entrenched offenders become, and the more unlawful rents they can extract from consumers. Forcing firms to disgorge these ill-gotten gains after the fact is difficult at best, and there is no way of compensating potential entrepreneurs whom monopolistic firms deterred from starting new businesses.[42]

#### Litigation alone is expensive and trades off with other initiatives

Skadden 21 [international law firm with a focus on antitrust, tax, and financial litigation. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement” <https://www.skadden.com/-/media/files/publications/2021/06/linakhansappointmentasftcchairreflectsbidenadminis.pdf>]

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### Fiat – the plan is studied and reviewed – that’s a huge drain

Khan 20 (Lina, Chair of the Federal Trade Commission. “THE CASE FOR UNFAIR METHODS OF COMPETITION RULEMAKING” https://awards.concurrences.com/en/awards/2020/academic-articles/the-case-for-unfair-methods-of-competition-rulemaking]

"A key feature of antitrust today is that the law is developed entirely through adjudication. Evidence suggests this exclusive reliance on adjudication has failed to deliver a predictable, efficient, or participatory antitrust regime. Antitrust litigation and enforcement is protracted and expensive, requiring extensive discovery and costly expert analysis. In theory, this approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the exclusive reliance on case-by-case adjudication has yielded a system of enforcement that generates ambiguity, drains resources, privileges incumbents, and deprives individuals and firms of any real opportunity to participate in the process of creating substantive antitrust rules. It is difficult to quantify this harm.

#### Priorities – switching focus directly trades off with energy – everything else is priced in now

ECCR 13 [Energy and Commerce Committee Republicans, United States House of Representatives. “Subcommittee Begins Comprehensive Look at the FTC on Eve of 100th Anniversary” https://republicans-energycommerce.house.gov/news/press-release/subcommittee-begins-comprehensive-look-ftc-eve-100th-anniversary/]

WASHINGTON, DC – The Subcommittee on Commerce, Manufacturing, and Trade, chaired by Rep. Lee Terry (R-NE), today held a hearing on “The FTC at 100: Where Do We Go From Here?” Today’s hearing kicked off a series examining the work of the Federal Trade Commission as the agency approaches its 100th anniversary next year. The subcommittee is examining the commission’s mission, operating budget, and statutory authorities and what improvements are needed to help the agency protect consumers and promote competition in an ever-changing market. FTC Chairwoman Edith Ramirez testified today alongside commissioners Julie Brill, Maureen K. Ohlhausen, and Joshua D. Wright.

The FTC was originally established in 1914 by the Federal Trade Commission Act to enforce competition law and prevent anti-competitive business practices, but over the past 100 years, the commission’s authority has evolved and it now employs broad jurisdiction across most sectors of the economy.

“We all have a stake in the FTC’s current mission to promote consumer welfare by ensuring that business practices in the United States are fair and transparent—while also addressing any market collusion or anti-competitive activity that could unfairly fix prices at a higher level than the market would otherwise demand,” said Terry. “However, like all entities in the government, prioritization of goals is critical. Not only are the FTC’s resources finite, but also the sheer breadth of the FTC’s jurisdiction makes it necessary.”

“From the smallest, independent corner store to the largest industry, from online data collection to multi-million dollar merger reviews, the FTC is charged with ensuring industry players play fair, competition thrives, and that consumers enjoy the fruits of that competition as well as protection from fraudsters. Of course, with such great power comes equal concern about the appropriate use of that power and potential consequences for job creation and economic growth,” said full committee Chairman Fred Upton (R-MI).

Speaking to the commission’s current consumer priorities, Chairwoman Ramirez said, “In recent years, the FTC has emphasized protecting financially distressed consumers from fraud, stopping harmful uses of technology, protecting consumer privacy and data security, prosecuting false or deceptive health claims, and safeguarding children in the marketplace.”