# Round 4 1NC

## OFF

### Cap K [Commons]---1NC

#### Anti-trust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19 Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism.” Democracy @ Work. December 9th, 2019. https://www.democracyatwork.info/eu\_competition\_monopoly\_in\_capitalism.

Today I'm going to devote the program to something many of you have asked me to present, to talk about, to analyze, and that is the question of monopoly. It has to do with the assertions we hear often these days that somehow our capitalist system, here in the United States and beyond, is being negatively affected because monopolies have replaced or displaced competition. The idea here is if only we can get competition back, recreate a competitive capitalism, why then the problems we face will go away. Today's program is a design to show you how and why that is not the case, to think about these things in a different way from this nice story that capitalism is basically fine; it's just the monopoly form we have to get rid of so we get back to the competition which we're all supposed to believe is wonderful and presents us with no problems to solve. So let's go, and let's do it in a systematic way.

First, it is of course easier, faced with a declining capitalism, a capitalism that's all around us with its extreme inequalities, with its instabilities – here we are, trying to cope with the effects of the Great Crash of 2008, even while we anticipate the next downturn coming down the road soon – an economic system that has shown (that is, capitalism) that it is not respectful of the natural environment; it is not, as the words now go, sustainable in a reasonable way. Yeah, we're surrounded by problems of capitalism. So it's comforting in that situation to get the idea from somewhere that this really isn't a problem of capitalism as a system but rather the problem brought in somehow from the outside – monopoly – a situation in which competition among many companies gives way in some way we're not quite sure about to a domination by one or a small handful of companies. And so the argument goes, we don't have to be critical of capitalism; we don't have to think about an alternative system. No, no, we just have to deal with this little detail, the monopoly problem. And if we can deal with that, well, we'll get back to a competition, to a competitive capitalism that is good.

There are three big mistakes involved in this way of thinking, which is nonetheless very widespread and very popular, more so now than in quite some years. First mistake: Capitalism has been wrestling with the problem of monopoly from day one. We have had repeated periods of monopoly. They have eventually led to movements, often of many people, to destroy or remove monopoly. We used to call that in America trust-busting, or antitrust. We even have a department within the Department of Justice in Washington devoted to antitrust activities. Yeah, we've been waging battles against monopoly over and over again, and you know why? Because we keep having monopolies over and over again. Google is a monopoly. Amazon is a monopoly. They're all around us: companies that have effectively no real competition. This is a problem that capitalism has always displayed. And that ought to lead you to wonder whether thinking about it as something we can do away with isn't maybe the best possible example of wishful thinking.

The second big mistake is to imagine that competition is some unmixed blessing. It never was, and it isn't today. A competitive market is a human institution. Like every other human institution, it has strengths, and flaws, and weaknesses. To think of competition as some magical perfection is a silly abnegation of your own rational capability to evaluate something. It's sort of advertising thinking. By that, I mean the advertiser tells you what's good about the product they've been told to advertise; they don't tell you what's bad about it. If you want to evaluate it, you don't talk to an advertiser because they only give you one side. The people who promote competition use advertising logic. We're not going to do that here. Competition is no unmixed blessing.

And finally, I'm going to show you that competition is itself the major cause of monopoly. So that even if we ever got back to a competitive capitalism, all that would mean is we're back in the process that produces monopoly – as it always has.

All right, so let's begin. I'm going to start with explaining how competition has all kinds of consequences that most of you, like me, don't like, don't want. It's a discussion, if you like, of competition's other side: you know, the part that the advertiser doesn't tell you about. The used-car salesman who wants you to buy that junk doesn't tell you about what happened last week in the car crash that that was part of, etc., etc.

All right, let's begin. One of the major reasons that American corporations shut down their operations in the United States and moved them to China, among other places, is because of – you guessed it – competition. They wanted to make more money than they had been before. They were afraid of other companies beating them in the competitive game, so they said wow, let's go to China, because there you can pay workers a lot less. There you don't have the same rules to obey. There they don't care that much about pollution as they do here. So we can save on all kinds of costs, and that will allow us to undercut our competitors. Yeah, one of the consequences of competition was the exodus of American companies to other parts of the world, and the enormous unemployment that resulted from it. Yeah, that was a result, among other things, of competition.

Here's another one: Capitalists, employers, seeking to compete with one another, often engage in what we call automation. They bring in machines that are cheaper to use than human laborers, and that gets them a step ahead of their competitors. Okay, if we replace people with machines, we throw those people out of work. That has an impact on them, their self-esteem, their relationship to their spouse, their relationship to their children, their relationship to alcohol – should I continue? What are the social costs of automation? They're huge. They've been documented over and over again. Competition provokes and produces automation.

Let me give you another example: Companies are competing, say, in the food business – you know, trying to get a customer like you or me to buy this kind of cereal rather than another. So they get their labs to go to work, and they discover we can replace wheat, which we used to put in our little flakes, with – Lord help us – some chemical that is cheaper than wheat. We're not going to worry about what that chemical does to your chemistry in your body because we can now lower the price of our cereal, because we're saving on wheat, and undercut the competitor. The human beings who eat this stuff will suffer, now and in the future, but competition left our producer of cereal no choice.

And in case you think I'm making some up, let me give you some concrete ones. The Boeing Corporation, the major producer of airplanes in this country, is in a crisis as a corporation. You know why? Because the 737 Max crashed a couple of times, killing hundreds of people. And you know why? It turns out they economized on safety measures, and training measures. And you know why they did that? Because they're in a very tight competition with European and other airplane manufacturers, and that leads them – as it usually does – to look to cut corners: that race for, quote, "efficiency." Yeah, it was competition that contributed to those deaths and to that problem. That's competition too. You can't whitewash this story; they're real. One of the ways Amazon beats its competition is it speeds up the work process. It has figured out ways to make people work much more intensely, using up their brains, their muscles, their nerves, in ways that cause real long-term physical damage to working people. That, too, is a result of the competitive effort.

And you know, it wasn't so long ago that children were part of the labor force. That's right, kids as young as five and six years of age. We were told they have little fingers, you see. They can be more productive than people who are adults with big fat fingers, you know – that doesn't work. And by the way, you should be grateful because poor kids are the ones we hire, and that gives their poor families more income than they would otherwise have. We heard those arguments. Competition, the companies said, required them to use the more productive, and the lower-wage, children rather than adults. So child labor was also a result of competition. It was so ugly and so troubling to so many people that finally there were movements in the United States and many other countries simply to outlaw child labor. So it became a crime for any employer to use a worker who was under 16 or 18 years of age. That was a way in which people said we are not going to allow competition among capitalists to destroy our children. They were recognizing that competition has an awful effect in what it does to children.

Well, it has many awful effects. So let's be clear: In the history of capitalism, the monopoly problem (which we're going to get to in the second half of today's program) is no worse, it's just different, from the competition problems. Capitalism goes through phases of competition and monopoly, going from one to the other, as I will explain. But we shouldn't bemoan the one in favor of the other, any more than vice-versa. These are neither of them solutions; they are both phases of the problem. And the problem is capitalism, which does its number on us both in the period when it's competitive and in the period when it's monopoly. People who want us to engage one more time in an anti-monopoly crusade are doing something that in the end evades the problem, which is the system – capitalism – not this or that form of that system, such as competition and monopoly.

We've come to the end of the first half of today's Economic Update. This gives me an opportunity to remind you, please, to sign up if you haven't already, to subscribe to our YouTube channel. It's a way easily for you to support us, doesn't cost any money, and it is a big help to us in terms of our reputation and what we can accomplish. Likewise, please make use of our websites. They are there for your communication with us. They are there for you to be able to, with a click of a mouse, to follow us on Facebook, Twitter, and Instagram. And finally, a special thanks goes, as always, to our Patreon community for their ongoing enthusiastic support. It means the world to us. My final, very final for this first half, is about a new book that we have just produced and released. It's a follow-up to an earlier volume I have spoken to you about that was called Understanding Marxism. For the same reason, we have now produced a brand-new book, just out, called Understanding Socialism. It is a response, as this program is, to issues, questions, comments you have sent to us in large numbers. It's an attempt to give an overview of the different interpretations of what socialism means, of what happened in countries like Russia and China that tried to create this – the strengths, the weaknesses, the lessons to be learned, what to do, and what not to do. Please, if you're interested and want to follow up, check us out, check the book out: lulu.com is how you find both books. And I will be right back; stay with us.

Welcome back, friends, to the second half of today's Economic Update. This program, as I explained, is devoted to the analysis of competition and monopoly as two interactive, sequential phases of capitalism as a system. The first part of the program was devoted mostly to competition, so let's turn now to monopoly. What is the basic definition and criticism of monopoly? Strictly speaking, monopoly is defined simply as a situation in which the producers of a particular commodity – shoes, software programs, haircuts, it doesn't matter – have been reduced to only one. Literally one seller – a monopolist. But in general language, it includes also situations where many producers who once competed with one another have been reduced to only a handful. The strict term for only a handful is "oligopoly," but we don't have to split hairs about this. "Monopoly" will be the word we use for either one or a very small number.

For example, there were once dozens of automobile companies, but very quickly their competition reduced them to basically three for much of the post-World War II period, and you know their names: Ford, General Motors, and Chrysler. And likewise there were once many cigarette producers, there were once many television-set producers, and they became very few, whose names, therefore, we all know.

What's the criticism of a monopoly or oligopoly situation? Again, very simple: The idea is, if there's only one seller of something, that seller can jack up the price way above what he might have otherwise because he doesn't have any competitor. If he had a competitor, if he raised the price, the competitor would get all the business because we'd all go to the competitor who hadn't raised the price rather than buy it at a higher price from the monopolist. So we don't like monopolies, because they can jack up their prices and their profits because they don't have a competitor. And if it's a few, a handful, well then we talk about things like cartels: arrangements when a few get together over dinner, or out on the golf course, and tell us what the price is. If you ever wondered why the prices of different cars, different cigarettes, and so on, are so close to one another – mm-hmm – that's because there are few sellers, and somehow they worked it all out. But the basic criticism is that a monopoly is a situation in which the seller of something jacks the price up way beyond what they could otherwise get because there are no more competitors.

So let's talk about this monopoly problem and where the monopolies come from. Well, the first and most important lesson is this: Competition produces monopoly. It's not something external, imposed on competition. It has nothing to do with human greed or anything else. Are people greedy? You betcha – some more, some less – but that's really a separate matter. It's competition that produces monopoly, and let me show you how that works. In competition, we have, by definition, a whole bunch of producers. They all produce the same thing. They compete with one another, hoping we, the consumer, will buy from one rather than the other. They compete in the quality of what they produce and in the price of what they produce. And we are supposed, as consumers, to go look for the best quality at the lowest price, and to patronize that one who offers that to us better than the others that we could buy from but choose not to.

Okay, that's a fair definition. Now let's follow the logic. Company A produces – however it manages it – a better quality and/or a lower price than Company B. So we all go to Company A. Company B can't find any buyers because it's not competitive. Or to say the same thing in other words, Company A outcompetes Company B. Here's what happens: Company B collapses. Because it can't sell its goods, we're all going to Company A. So Company B sooner or later declares bankruptcy. It can't continue. It lays off its employees, it stops buying inputs, because it can't compete. Good. Now what happens in Company A? Company A says hey, there's a whole bunch of workers that have just lost their job at Company B; they're trained in producing what we produce; let's go hire some of them. And likewise, Company A says, they're not using their computers, or their trucks, or their other inputs. They're going to have to sell them on the secondhand market. We can get some important inputs we need at a lower price than we would have to pay if we bought them new. So what begins to happen is, where before there were two companies, A and B, there's now one larger A, and B has disappeared. Or to say the same thing in simple English, A – the winner in the competitive struggle – eats, absorbs into itself, what's left of Company B.

And this process is repeated over and over, until 30, or 300, companies have become one, or two, or three. That's the result of competition. That's how competition is supposed to work. That's how competition does work. It's important to understand: Monopoly is where competition leads. And as if that weren't enough, let me make sure you understand this from the business point of view: It is the great dream of every entrepreneur to become the last one standing in the competition, to win the competition, not just because it makes you feel good you outmaneuvered your competitors, but because if you're the last one standing, you're the monopolist. The reward for having outcompeted the others is that you're now in a position to jack up the profits, and the prices, way beyond what you could have done before.

So we have a system that produces monopoly, and all the incentives for every entrepreneur in competition to work as hard as possible to become the monopolist. So why is anyone surprised that monopolies keep happening, because they're the whole point and purpose of capitalist competition. If you ever were – and we never have, but if you ever were – able to get rid of all the monopolies and re-establish competition, all you would be doing is setting this same process in motion again for the umpteenth historical time. In other words, fighting against monopoly is pointless as long as you have capitalism, because it is the endless reproducer of this problem – as it always has been.

Now, how do monopolies maintain themselves? If you're the only one standing, you're a monopolist. Or you're an oligopoly, you're a few, and you get together and jack up your prices together. The question becomes look, a monopolist makes very high profits – much higher than a competitor can achieve – and isn't that an enormous incentive for other capitalists to get in on that business? Because look at the profits they're earning, because they're the only one. Apple, Amazon, Google – the profits are staggering. Everybody wants to get in. So the way a monopolist has to think is, I've got to create obstacles that block other people from coming in to get a piece of the enormous profits my monopoly allows me to get. We call that in economics "barriers to entry." Monopolists need to create barriers. Let me give you a couple of examples.

The major soft drink makers in the United States – basically Coca-Cola and Pepsi Cola – they produce a drink that has sugar and coloring in it, and lots and lots of water. Let me assure you, there is nothing difficult or complicated about producing a mixture of sugar, color, and water. It doesn't take a genius; it never did. Pepsi and Coca-Cola make a fortune off of their product, as we know, and they have for decades. They have a virtual monopoly. Now, lots of other people could produce water, sugar, and color close to, if not identical with, whatever they produce, but they can't break through. They can't really get to that status. And you know why? Because Coca-Cola and Pepsi erected a barrier to entry. And the way they did that was with advertising. Every billboard, every magazine cover, every doorway of every institution you've ever been to has a picture of smiling, happy people drinking one or the other. You've learned: that's the drink, that's the drink. Another company might make a perfect substitute, but they can't afford the enormous cost of advertising. The advertising costs more than the water, and the sugar, and the color. What you pay for when you buy Pepsi and Coke is the advertising that got you to buy it. You're paying for being hustled. But it works, because it means other companies know that they can't get in there by cheaply producing an alternative, because you have to produce the advertising that goes with it, or else you can't do it. And so their monopoly is maintained.

Here's another way to maintain a monopoly: Get the government to step in. Here the famous example is the milk producers. Some years ago, there was a crisis with milk. There was contamination; people were getting sick. So the clever milk monopolies came in and said, we're going to support the enormously expensive, special equipment to guarantee pasteurization, and so on, of milk. Why did they support it? Because your small farmer, your small dairy producer, can't afford it, so they go out of business. Only the big, rich few that are left can afford the enormous equipment. They used governmental rules to create a barrier to entry.

Here's another way: corrupt public officials. President Trump denounces Huawei corporation because it compromises our national security. It denounces European car producers because somehow their shipping cars here compromises our security. Who cares? As long as the president blocks other companies from getting into the business that might compete with an American, a barrier to entry exists. Monopolists have been very creative in coming up with ways to preserve their monopolies.

I don't want to lose the basic point. The basic point is: Capitalism oscillates, back and forth between competition and monopoly – first this industry, then that one. For a while, Ford, General Motors, and Chrysler were the monopolies – or the oligopoly, if you like – in automobiles. But eventually, Toyota, and Nissan, and Peugeot, and Fiat broke the monopoly. In that case, it was foreigners who did it. And then we had some competition, and that, then, is now shrinking. The French – the last two producers in France – have just agreed to merge. You get the picture. Industry by industry, first this one, then that one, go through one phase or another.

The important point is: The phases are not our problem. They merge into, and incentivize, each other. Each provokes movement in the other direction. The point to understand is that the problems of a capitalist system are not about this oscillation of phases. We're not going to solve the problem of monopoly by getting rid of them and re-establishing competition. We've been there; we've done that; it reproduces monopoly; and it doesn't change the basic inequality, unsustainability, instability of capitalism. We need to get beyond that stale, old debate – competition versus monopoly – and face the underlying reality: Capitalism is the problem, and getting beyond it is the solution.

#### Capitalism drives extinction and structural violence.

Jamie Allinson et al 21. Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

#### Vote neg for anti-capitalist commons---collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic.”

Nick Rose 21. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

### Regulations CP---1NC

#### The United States federal government should

#### -strengthen integration and interconnections of energy markets with Europe, Asia, Africa, and Latin America,

#### -Define practices that do not meet comity balancing test as a threat to national security.

#### 1AC Koryani is the advocate for plank 1.

#### CFIUS solves and avoids the FTC disad.

Richard M. Steuer 17. Member of the New York Bar. "The Horizons of Antitrust." St. John's Law Review, vol. 91, no. 1, Spring 2017, p. 177-210. HeinOnline.

As described earlier, some countries assign their competition agencies responsibility for assessing and weighing not only consumer welfare, but other goals as well. This can be daunting, but every town council and zoning board routinely faces the challenge of weighing competing goals, usually with far less analytical support.8 ' Nevertheless, the arguments against assigning competition agencies authority for applying other goals are that these agencies are ill equipped to perform non-economic analysis, and that such an approach would concentrate too much discretion within the competition authorities. If, for instance, the Federal Trade Commission were tasked with conducting a "net benefit" analysis, considering all the goals discussed earlier, it would require greater resources. It also would need the political strength to withstand the criticism it would inevitably attract year in and year out from disappointed parties and their supporters. Some countries, such as Canada and Australia, have established authorities separate from competition authorities to oversee foreign investment, applying a wide variety of goals either apart from consumer welfare or, as in Australia, including consumer welfare. 82 A model like that adopted in Australia would contemplate the creation of a foreign investment review board to advise a cabinet member or the president, who in turn would have authority to disapprove foreign investments, applying a "national interest" or "net benefit" test. If such an arm of government were assigned responsibility in the United States for balancing all these goals in the context of foreign investment, who has the breadth of experience, depth of wisdom, and political respect to make such judgments? The National Economic Council, as has been suggested by the Center for American Progress?" Would its determination be subject to judicial review, and under what standard? What about expanding the responsibilities of CFIUS, as proposed under the Foreign Investment and Economic Security bill,' to apply a "net benefit" test to foreign acquisitions of control regardless of whether those acquisitions pose a threat to national security? Under that proposal, the Committee's determination would be subject to review by the President, but otherwise would be nonreviewable. What about creating a new body, modeled on Australia's Foreign Investment Review Board? How would it be composed and who would appoint its members? Would it be modeled on the Federal Trade Commission, with members from more than one political party serving fixed terms or would it be reconstituted by each administration, like the Council of Economic Advisors? Who would have the ultimate responsibility-the Treasury Secretary? The Commerce Secretary? The President? What would be the threshold for review? Would judicial review be possible and, if so, under what standard? The simplest approach might be to expand the mission of CFIUS by defining "national security" to include economic security, or "national interest," and to create a new advisory board, with adequate staffing, to provide the support that CFIUS would need to fulfill a broader mission with respect to acquisitions of foreign control that do not raise issues of national defense or homeland security. Depending upon the scope of this new authority, there might be calls to add provisions to allow judicial review in those instances where neither national defense nor homeland security is involved." It would be easiest to leave well enough alone, of course, but if the American economy truly is being threatened by the current approach, a new assignment of responsibility should be considered. There are several viable alternatives, as just described, each of which has pros and cons. What is clear is that if the present structure in the United States no longer is working satisfactorily, a new structure needs to be considered.

### States CP---1NC

#### The 50 states, territories and DC should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws pursuant to a comity balancing test.

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

### Notice & Comment CP---1NC

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to [plan].

#### Solves the case, engages notice and comment, and avoids courts disads.

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Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Democracy solves war.

Christopher Kutz 16. PhD UC Berkeley, JD Yale, Professor, Boalt Hall School of Law @ UC Berkeley, Visiting Professor at Columbia and Stanford law schools, as well as at Sciences Po University. “Introduction: War, Politics, Democracy,” in On War and Democracy, 1.

Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

### FTC Trade Off---1NC

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

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.

#### That trades off with the necessary resources for privacy enforcement.

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

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

#### Unchecked algorithmic bias risks massive inequality and extinction.

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

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

### Japan DA---1NC

#### New antitrust is applied globally---offends allies---regs counterplan avoids it.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered to be purely local, territorial, or political. This view is given considerable support by a powerful neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making. 32

Within this model antitrust law is a kind of background umpire that does not make first instance choices about price, quantity, quality, new entry and the like, but that does limit the anticompetitive exercise of market power. Antitrust operates as a kind of "macro" version of contract law. The common law of contracts is designed to facilitate and protect the utility of individual private bargains; antitrust is designed to do much the same thing, but for markets as a whole. Under this conception a well defined set of antitrust principles always operates in the background, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, widespread agreement exists both inside and outside the United States on a set of core principles pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies.

In contrast, the power to regulate is different. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, regulatory design is much more specific to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation.

For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes.

But homogeneity in antitrust policy also begins to break down when antitrust law moves beyond its fundamental neoclassical concern with cartels or well-defined exclusionary practices, and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence.

Increasingly, American courts seem willing to apply antitrust law to markets regulated by foreign nations under circumstances where regulatory laws themselves would never reach. For example, neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But both federal and state courts have done precisely that under the guise of antitrust enforcement.3 4

Antitrust policy makes this thinkable as a result of the confluence of two sets of doctrines. First is the expansive reach of our antitrust laws to practices that have a substantial effect on United States commerce. Second is the very narrow conception of comity that applies in antitrust cases.

As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38

Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market.

But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of comity may no longer preclude a Sherman Act suit. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42

But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified.

IV. Extraterritorial antitrust and foreign deregulation

As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation of their own highly regulated industries. But to a large extent modem antitrust has inherited the regulatory attitude expressed by the Western Union decision discussed above. For several reasons, the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

#### Ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly widespread and penetrating economic globalization today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called multinational or global enterprises, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less diminishing to become almost borderless; as for legal regimes, however, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such an international regime is lacking and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious jurisdictional conflicts have transpired in the last several decades between the United States and other states over the so-called extraterritorial application of U.S. antitrust laws on anticompetitive conducts abroad. This problem has also caused diplomatic frictions between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of international conflicts caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and Japan, considering the grave implications to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued diplomatic protests. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States. The Court then took a restrictive view on the test of balancing interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and rejects the effects doctrine, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of Japan, the extraterritorial application of U.S. domestic laws (including U.S. antitrust laws) based on the effects doctrine is not allowed under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court affirmed the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Economic alliance is key to Indo-Pacific cyber security---only coop allows them to leverage technology.

Patrick M. Cronin 4/15/21. Asia-Pacific Security Chair @ Hudson. "U.S.-Japan Alliance in Full Bloom". https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom

Even if seldom mentioned by name, China is the unmistakable fulcrum around which alliance policy on all issues turns. Competition with China is primarily economic and technological, but these issues often spill over into security and human rights.

Economically, a rebounding U.S. economy and Japan will collaborate to strengthen the resilience of vital supply chains. Semiconductor chips are essential for all electronics, and Suga and Biden are determined to ensure their availability. Equally, the U.S. and Japan have an opportunity to leverage their two-year-old digital trade agreement to help negotiate a multilateral accord and establish high international standards for finance and commerce in the cyber age.

As a dominant player in semiconductor manufacturing and a member of APEC and the World Trade Organization, Taiwanshould play a part in both supply chain security and digital trading standards. Indeed, bolstering Taiwan’s place in the global economy of other democracies is a far better means of thwarting Beijing’s intimidation strategy against Taiwan than just sailing near the Taiwan Strait with an aircraft carrier.

The commanding heights of the 21st century economy center on technology. So, while the United States and Japan retain a strong interest in economic cooperation with China, those relations become considerably sharper over leading-edge technologies such as 5G telecommunications, artificial intelligence and quantum computing. Biden and Suga should showcase their commitment, not against China, but in favor of technological innovation and secure connectivity.

An excellent way for the alliance to demonstrate a commitment to practical technology cooperation would be to work together to expand investment in 5G Open Radio Access Networks (ORAN). Given the concerns surrounding allowing China to dominate fifth-generation telecommunications infrastructure, the United States and Japan need to scale up a cloud-based software alternative. The good news is that Japan’s Rakuten is already a leader in demonstrating ORAN’s feasibility, and there is bipartisan support in Congress for increasing U.S. investment in modular 5G.

The alliance also requires deeper cooperation on cybersecurity. Of five issues highlighted at the recent 2 + 2 meeting between U.S. and Japan defense and foreign ministers, cyberspace was the most traditional national security issue. Japan is inching closer toward becoming a de facto sixth member of the Five Eyes intelligence-sharing arrangement, and the Biden administration should encourage that trajectory. A stronger digital alliance can, in turn, advance cyber resilience throughout the Indo-Pacific region.

#### Extinction---Indo-Pak nuclear war.

Ahyousha Khan 20. "Research Associate" at Islamabad Based Think-tank "Strategic Vision Institute". "Artificial Intelligence without Cyber Resilience in South Asia". South Asia Journal. 7-16-2020. http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/

With increased dependence on information technology and rapid digitization of systems, term cybersecurity gained momentum. However, these systems not only need to be securitized but they should be resilient against the threats. Cyber resilience is the ability of the system to operate during an attack and achieve a minimum level of operationalization while responding to an attack. It also enables the system to develop a back-up system that works in case of attack. Cyber resilience is a step forward from cybersecurity because it not only ensures the security of the system, but also identifies the threats to it and then proposes the system that could work amidst such attacks. Most military systems are resilient against kinetic attacks because resilience and survivability go hand in hand. But, with modernizations in the military, it is necessary that the state’s cyber networks which are working on artificial intelligence must be resilient against kinetic and non-kinetic attack.

Today states are in a race to use the AI in their military systems to achieve maximum military gains and denying their adversary the same. The situation is not so different in South Asia where two nuclear rivals of the region are paving the way towards the use of artificial intelligence for military purposes. India has developed the Center for Artificial Intelligence and Robotics (CAIR) in DRDO, with the aim to develop AI within the military systems to improve geographical information system technology, decision support systems, and object detection and mapping. Moreover, companies like Bharat Electronics Limited (BEL) are already in the process of developing and incorporating AI into military equipment. This includes an AI-enabled patrol robot developed by BEL built in the hope to be utilized by the Indian military. Moreover, in 2019 India’s Gen. Bipin Rawat said adversary in the north is spending a huge amount on AI and cyber warfare, so we cannot be left behind in this race. It is mostly projected by the Indian policymakers and many international scholars that India is facing adversaries at two fronts (China-Pakistan), to justify India’s military expenditure and modernization. However, recently, events like Galwan Valley clash evidently exposed that India’s military capabilities are mostly against Pakistan. Moreover, South Asia’s security dynamics are heavily characterized by the action-reaction chain. To avoid the security dilemma vis-à-vis India, Pakistan would also invest in AI. At the moment Pakistan has also started working towards achieving expertise in AI. In 2019 President of Pakistan launched PIAIC with a focus on the development of skills in AI to strengthen economy and defence systems. Moreover, there are centers like the National Center of Artificial Intelligence and the Department of Robotics and Intelligent Machine Learning in NUST, which are working to improve AI-based knowledge in Pakistan. Besides that Pakistan recently launched a program named “Digital Pakistan” to increase access and connectivity, digital infrastructure, e-government, digital killing, and training and introduce innovation and entrepreneurship.

There are many studies done on the implications of AI on nuclear deterrence and strategic stability in South Asia. These studies highlight that due to prevalent asymmetry in the conventional military build-up, the introduction of AI into military technology would worsen the already fragile deterrence stability of the region. This assumption is based on the argument that due to AI in reconnaissance systems, high-level intelligence collection would affect the survivability of nuclear weapons, which is based on diversification and concealment. However, AI would also enable both states to have more response options in a short time with the help of decision-making tools in case of a crisis, especially in aerial battles.

Moreover, both states are moving towards the massive digitalization of their military systems and society without building cyber-resilient systems. Resilience can be built against vulnerabilities like human factors, massive speed of the systems, protection, and storage of data and advanced persistent threats (ATPs). Artificial intelligence-based systems must be incorporated in societies and militaries along with mechanisms to strengthen the cybersecurity systems. A front runner in AI like the US has also expressed concerns over the need for modern equipment to operate on “internet-like networks” and subsequently increased vulnerabilities due to their applicability. Therefore, military modernization can happen effectively through cyber resiliency in military systems, network processes, and cyber architecture. A cyber-resilient system would enable the state to develop a system that would remain functional during a phishing attack. Steps like cyber deception, agility, and clone defense could increase resilience in the existing systems. This is important to understand in already lacking strategic stability, military systems based on artificial intelligence would be an ideal target of AI advanced persistent threats in South Asia.

Therefore, as the process of digitalization is increasing in the Pakistan-India equation, it is also becoming very important that both states should develop resilience in their cyber systems so that the technologies could give them an advantage rather than becoming a security peril for them.

### T Core---1NC

#### The core antitrust laws are The Sherman Act, the Clayton Act, and the Federal Trade Commission Act.

Thomas Horton 10. Professor of Law and Heidepriem Trial Advocacy Fellow, University of South Dakota School of Law. “Rediscovering Antitrust's Lost Values.” The University of New Hampshire Law Review. https://scholars.unh.edu/cgi/viewcontent.cgi?article=1305&context=unh\_lr

Part II of this Article discusses Congress’s historical balancing and blending of fundamental political, social, moral, and economic values to create a constitutional-like set of flexible laws that can be adapted to unforeseen and changing economic and political circumstances.22 Part II.A. briefly reviews some of the extensive scholarship addressing Congress’s balancing of values and objectives in its core antitrust laws including the Sherman, Clayton, and FTC Acts. Parts II.B. and C. explore the less-studied balancing of political, social, moral, and economic values and objectives in more recent antitrust legislation.23 Part II.B. specifically examines the legislative debates undergirding the passage of the HSR Act. 24 Part II.C. then turns to the debates and discourse that led to the passage of the NCRA in 1984 and the subsequent National Cooperative Production Amendments of 1993 and 2004. 25

#### Violation---their advocate is about clarifying the Foreign Trade Antitrust Improvements Act.

Ryu ‘16 [Jae Hyung; Fall 2016; J.D. Candidate (2017), Washington University School of Law, St. Louis, Missouri; Wake Forest Journal of Business and Intellectual Property Law; “Deterring Foreign Component Cartels in the Age of Globalized Supply Chains,” vol. 17, no. 1, https://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/wakfinp17&section=6]

Suppose an international cartel fixed the price of a product manufactured abroad and imported into the United States. The cartel would be liable under the Sherman Antitrust Act of 1890 1 (the “Sherman Act”) for interfering with free competition in the United States and harming the American economy, though the cartel activity occurred outside the United States.2 Now, suppose that the price-fixed product was a component (e.g., liquid crystal displays (“LCD”)3 or capacitors 4 ). These price-fixed components are incorporated into finished products (e.g., phones5 and televisions6 ), consequently raising the prices of the finished products.7 When those finished products with the hiked prices are imported into the United States, should the component cartel be similarly liable under the Sherman Act for interfering with free competition and hurting the American economy? Because the adverse economic effect is felt just the same, this Article argues in the affirmative and proposes a new paradigm to treat the importation of finished products incorporating price-fixed components under the “import inclusion”8 provision of the Foreign Trade Antitrust Improvements Act (the “FTAIA”). This Article further charges Congress to amend and clarify the FTAIA for the first time since the statute’s enactment, and to delineate the contours of conduct involving import trade or commerce in the context of the FTAIA. Additionally, this Article argues that the Supreme Court should revisit the indirect purchaser doctrine9 in Illinois Brick Co. v. Illinois10 that limited the private suit antitrust enforcement mechanism against foreign component cartels in order to update the application of the U.S. antitrust statutes in today’s age of globalized supply chains.

#### 1. Limits---only predictable limit is it amends the core statutes---justifies endless amendments.

#### 2. Ground---core change ensures links to core generics like biz con and politics by forcing the aff to structurally change antitrust.

#### New affs are a voter---make neg prep impossible---decks fairness and education---disclosure solves.

### T Private---1NC

#### Private sector means non-government.

US Code. 2 U.S. Code § 658 – Definitions. https://www.law.cornell.edu/uscode/text/2/658#9

The term “private sector” means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

#### They violate---rare earth minerals extracted by SOEs

Fp Analytics, 5-1-2019, "Mining the Future," Foreign Policy, https://foreignpolicy.com/2019/05/01/mining-the-future-china-critical-minerals-metals/

A fight between the United States and China is brewing over 5G and the question of who can be trusted to control the world’s wireless infrastructure. But scant attention is being paid to an issue of arguably greater importance to the future of the world’s economy and security: China’s control of the raw materials necessary to the digital economy. No new phone, tablet, car, or satellite transferring your data at lightning speed can be made without certain minerals and metals that are buried in a surprisingly small number of countries, and for which few commonly found substitutes are available. Operating in niche markets with limited transparency and often in politically unstable countries, Chinese firms have locked up supplies of these minerals and metals with a combination of state-directed investment and state-backed capital, making long-term strategic plays, sometimes at a loss. Through in-depth analysis of company reports and disclosures, mapping of deal flows, quantification of direct and indirect equity stakes, and other primary research, FP Analytics has produced the first consolidated review of this unprecedented concentration of market power. Without rhetoric or hyperbole, this fact-based analysis reveals how rapidly and effectively China has executed its national ambitions, with far-reaching implications for the rest of the world.

China’s 13th Five-Year Plan declared 2016 to 2020 a “decisive battle period” for the nonferrous metal industry and for building a well-off society. Its hallmark initiative, “Made in China 2025,” aims to build strategic industries in national defense, science, and technology. To meet these objectives, in October 2016, the Ministry of Industry and Information Technology announced an action plan for its metals industry to achieve world-power status: By deploying state-owned enterprises and private firms to resource-rich hot spots around the globe, China would develop and secure other countries’ mineral reserves—including minerals in which China already holds a dominant position.

#### Vote neg for limits and ground---they open the topic to unlimited governmental monopolies and avoid business disads---decks clash and fairness.

## Cartels

### COVID---1NC

#### COVID disrupts supply chains.

Lee 20 (Yen Nee Lee is a correspondent for CNBC.com based in Singapore, covering a range of business topics from around the region, including trade, finance. Coronavirus pandemic will cause a 'much bigger wave' of protectionism, says trade expert. <https://www.cnbc.com/2020/04/10/coronavirus-expect-a-lot-more-protectionism-says-trade-expert.html> //shree)

Governments around the world will turn increasingly protectionist in the near term as they try to limit the economic damage from the coronavirus pandemic, a trade expert said on Thursday.

COVID-19 has already spread to more than 180 countries and territories and caused some countries to restrict exports of medical supplies — that's a decision that could spill into other areas such as food products, said Deborah Elms, executive director at consultancy Asian Trade Centre.

"There is a much bigger wave of protectionism in the near term that we should expect, that is not just in medical supplies ... but it will also start to affect food," she told CNBC's "Capital Connection."

"As countries get nervous about food stocks and food supply, food security, they're going to stop allowing the export or restrict the import of food products," she added. Global economic activity, including trade, is at risk of grinding to a halt as countries implement social distancing and quarantine measures of varying degrees to fend off the spread of the coronavirus disease, formally referred to as COVID-19.

The World Trade Organization on Wednesday said global trade — which was already slowing in 2019 due to the U.S.-China tariff fight — is projected to plummet by 13% to 32% this year. A recovery is expected in 2021, but that depends on the duration of the outbreak and the effectiveness of policies to combat the virus impact, according to the WTO.

### AT: Supply Chains

#### Integrated supply chains don’t solve war.

Joel Einstein 17. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

#### It doesn’t solve war---commerce just re-routes.

Joanne Gowa & Raymond Hicks 17. \*\*William P. Boswell Professor of World Politics of Peace and War, Princeton. \*\*Statistical Programmer, Niehaus Center for Globalization and Governance; PhD in political science, Emory. “Commerce and Conflict: New Data about the Great War.” *British Journal of Political Science* 47(3): 653-74. Emory Libraries.

The findings we report show that the Great War led to a **rerouting**, rather than a wholesale breakdown, of trade. This did not come as a surprise to states: the historical record shows that states anticipated wartime shifts in their trade channels. Most belligerents nonetheless incurred efficiency losses as a consequence of the shifts, but the losses pale in light of the aggregate costs the war imposed on them. These findings suggest that neglecting wartime trade channels can **overstate** the deterrent power of ex ante trade. It is reasonable to question the extent to which wartime trade can, in general, substitute for its ex ante counterpart. This depends, as we noted above, on the composition of trade. The dominance of homogenous products in trade at the time of World War I made substitution a feasible option. For the same reason, other wars that occurred during the first half of the twentieth century seem likely to have precipitated the same trade dynamics as did the Great War. Preliminary empirical analyses are consistent with this argument. 95 After World War II, however, intra-industry trade – that is, trade in differentiated products between countries with similar factor endowments – came to account for a much larger share of commerce. Krugman notes, for example, that intra-industry rose from about 22 per cent of trade between the industrialized countries in 1962 to about 50 per cent in 2006. 96 This trade tends to involve ‘highly specialized imported varieties for which domestic imports are hard to find’, 97 raising the estimated gains from trade that accrue to countries shifting from autarky to free trade. Trade in these products can magnify wartime trade costs to the extent that trade across enemy lines engages imports that cannot easily be obtained from other trading partners. Production networks also spread more widely across countries over time. This implies that conflicts in the more recent past might indeed have wreaked havoc on trade, raising the deterrent power of ex ante trade. But the composition of conflicts also shifted over time. After 1945, no war would ever again split the major trading states. As we noted above, the advent of the Cold War transformed them into each other’s sturdiest allies. Because the advanced industrialized countries account for a large share of **intra-industry trade**, post-World War II conflicts **did not endanger** the exchange of differentiated products. The same is true of foreign direct investment: for most of the twentieth century, it was largely the major developed country trading partners that were both its home and host countries. 98 The **changing composition of warring dyads** after World War II may help explain the findings in the empirical literature on this period that conflict and ex ante trade are inversely related. The effects of conflicts on wartime commerce in this period have yet to be examined, however. Conclusion That the First World War unleashed tremendous destruction is indisputable. It marked the inception of what has been described as the long European civil war. It resulted in sixteen million deaths and twenty million wounded and destroyed large amounts of physical capital. 99 In its wake, the great powers never established anything remotely similar to the Concert of Europe that succeeded the Napoleonic Wars. Their best efforts produced a League of Nations that was unable to resolve the conflicts of interest that stymied co-operation among them. They could agree neither on the enforcement of the Versailles Treaty nor on a collective response to the Great Depression, which set the stage for the outbreak of the Second World War. The Great War also reputedly destroyed the large trade flows that existed during the first golden age of globalization. For this reason, it has become central to debates about the liberal peace. Its outbreak seemed to destroy any hope that leaders had internalized the idea that war had become a ‘great illusion’, more likely to impose costs than benefits because of the concomitant destruction of the trade that had become integral to the growth of national power. 100 Because its belligerents had been each other’s major trading partners ex ante, the Great War seemed to destroy hopes that economic linkages would secure peace. Yet, the evidence we present here suggests that one of the largest wars in history did not induce a breakdown of trade. Instead, large shifts occurred in interstate commerce, privileging trade between allies, penalizing commerce between adversaries and increasing trade with neutrals. The composition of early twentieth-century trade helped to mitigate the welfare losses these shifts imposed, as it enabled states to switch trading partners and transit routes more easily than might seem possible later in the twentieth century. Because ex ante commerce between belligerents is not necessarily a good indicator of their ex post trade, estimates of the deterrent power of trade need to take both into account.

### AT: Energy Wars

#### Digital shift means this won’t happen.

Kenny 20 Charles Kenny, Charles Kenny is a senior fellow and the director of technology and development at the Center for Global Development. He is the author of “Close the Pentagon: Rethinking National Security for a Positive Sum World.” 2-10-2020, "Why war for wealth has fallen out of fashion," TheHill, <https://thehill.com/opinion/national-security/481607-why-war-for-wealth-has-fallen-out-of-fashion> - BS

As the conflicts in Afghanistan and Iraq drag towards their third decade, and Syria’s civil war ticks towards 400,000 dead, it may seem trite to observe that nobody really “wins” a war. But it nonetheless represents a significant historic change, and one that can help account both for the fact that the number of wars is declining as well as the type and location of wars that remain. War always has been “negative sum,” in that any resource gain to the victor was matched by an equal loss to the loser and both sides paid in lives and arms. But those who prevailed on the battlefield could more than compensate for their military costs through occupation, plunder and enslavement. Anthropologist James Scott discusses the earliest wars in his book “Against the Grain.” He suggests that city-states such as Umma and Lagash in Mesopotamia fought over land and water, but most of all people, and that was still the case when Caesar brought back as many as a million slaves from his invasion of Gaul. People, land and resources remained prizes worth fighting over well into the 20th century. Germany’s demand for Lebensraum (“living space”) and Japan’s obsession with obtaining an independent oil supply helped motivate World War II, for example. But economic change means that land and the stuff on or under it no longer is the key to prosperity and power worldwide. The World Bank calculates a measure of global wealth that divides it into natural capital — land, oil, gold — physical capital, including roads and factories, and “intangible capital.” That last category includes education and the institutions and knowledge from double entry bookkeeping to phonics-based literacy programs that allow economies to produce more value with the same amount of physical inputs. In 2014, natural capital accounted for 9 percent of planetary wealth, according to the World Bank. That compared to 27 percent for physical capital and 64 percent — almost two-thirds — in intangible capital. The fact that wealth is driven by intangible ideas, institutions and relationships, rather than tangible goods and land, means that it can’t be expropriated by an invader. So even winning on the battlefield simply can’t pay off. Take one recent example: The Iraq war has cost the U.S. alone around $2.2 trillion, according to the Watson Institute at Brown University. Oil revenues earn the Iraqi government less than $100 billion a year. Even if President Trump carried out his one-time plan to expropriate the country’s oil, and despite Iraq’s huge share of global reserves, the war would not pay off economically. At the same time, intangible capital is “positive sum” — unlike a barrel of oil, if I use the technology of the internet, you can use it too — indeed, we both benefit from more people using it at the same time. That strengthens the payoff to peaceful cooperation and trade. For all of the continued horror of Syria, Iraq and Afghanistan, the changed basis of wealth and power helps to account for the global decline of war. Since 1975, an average of less than two interstate conflicts have been ongoing in the world each year, and recent years have seen even fewer. No major power war has erupted since 1939 — an 80-year stretch. Most of the wars that remain are in regions where resources still have an outsized share of wealth: The low-income countries most at risk of civil conflict see an average share of natural capital in total capital of just under one-half, for example. Territorial disputes in richer regions of the world have not gone away, from the South China Sea through Ukraine, the West Bank, Gibraltar and The Falklands. And wars often are launched for reasons of domestic politics or ideology disconnected from calculations of power or wealth. But that no developed country could ever “win” a war, in terms of wealth, may help explain why interstate conflict is so much out of fashion. And it also suggests a powerful solution for those who would like to see even greater global peace: Help the poorest countries grow out of resource dependency.

### Grid Resilient---1NC

#### No widespread blackouts – That's not how the grid works.

Koerth 18 – Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", *FiveThirtyEight*, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

#### The grid is strong now---energy efficiency, new tech, and cycle generation.

Krysti Shallenberger 17, Utility Dive associate editor, 1-5-2017, "Predictions 2017: 8 sector insiders on what's next for power markets and regulation," Utility Dive, http://www.utilitydive.com/news/predictions-2017-8-sector-insiders-on-whats-next-for-power-markets-and-re/433358/

The traditional drivers of infrastructure additions were load growth and connecting distant generation sources to population centers. However, that has changed. Load growth is negligible in many areas. (At PJM we forecast peak load growth of less than half of one percent per year.) At the same time, more efficient technology, specifically energy efficiency and new natural gas combined cycle generation closer to load centers, has changed power flow patterns, which reduces the need for additional large-scale transmission expansion projects. The reduction in larger scale projects has allowed focus to be shifted to resolving aging infrastructure concerns on lower-voltage facilities. More efficient technologies, the capacity performance construct and upgrades to the system have made the grid increasingly robust and resilient. Last summer, for example, was the first time PJM met a peak demand of more than 150,000 megawatts without invoking emergency procedures and while net exporting power.

#### No grid impact---it’s overhyped.

Freedberg 14 (Sydney J, “Cyberwar: What People Keep Missing About The Threat,” Jan 6, <http://breakingdefense.com/2014/01/cyberwar-what-people-keep-missing-about-the-threat/>, CMR)

**Cites:**

--Peter W. Singer – former director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program

--Allan A. Friedman – Research Scientist at the Cyber Security Policy Research Institute at George Washington University's School of Engineering

**Singer and Friedman** also **do a valuable service** in **beating back the hype** **about “Cyber Pearl Harbors”** **and “Cyber 9/11s” or the US suffering countless millions of “attacks.”** **Those alarmist statistics lump together everything from a virus easily stopped by** someone’s **firewall** to credit card theft **to the loss of secret schematics for the F-35** stealth fighter. **Those “attacks” vary from trivial, to significant losses** for one particular business, to actual matters of national security, **but none of them does as much damage as a good old-fashioned bomb**, they argue. **Even if hackers shut down the** national **electrical grid for weeks** on end, bad as that would be, **it wouldn’t be as bad as a single nuclear explosion**. “**It’s** a lot **like ‘Shark Week**,’” Singer said about the overhyped dangers. “**Squirrels have taken down the power grid more times than the zero times hackers have**.” There’s lots of talk about how the attacker always has the advantage in cyberspace, he told an audience at Brookings this afternoon, but “**a true cyber offense, an effective one**, a Stuxnet style [attack] **is** something **quite difficult**.”

### AT: EMP

#### Impact is overhyped – they are just parroting the GOP party platform.

Matthew Gault, 7/24/2016. Contributing Editor at War Is Boring; citing Peter Singer a cyber security expert and Yousaf M Butt a physicist serving as foreign affairs officer at the State Department’s Space and Advanced Technology office. “The Overrated Threat from Electromagnetic Pulses.” *War is Boring*. <https://warisboring.com/the-overrated-threat-from-electromagnetic-pulses-46e92c3efeb9#.6issj3rzp>.

The problem with fear over electromagnetic weapons is that it forgets two simple facts. First, generating enough juice to cause a significant amount of damage is really hard. Second, a country dealing with busted electronics after an EMP assault is a country fighting a nuclear war.

“EMP is the new test case of seriousness in national security,” cyber security expert Peter W. Singer tweeted after reading the platform. “But not in the way advocates not in on the joke think.”

I reached out to Singer and, after a brief pause to make sure I was serious, he pounced. “There’s this irony of the people who think it’s serious not realizing that they’re the joke,” he explained. “When you walk through the actual scenarios of use, it doesn’t pass the logic test.”

An electromagnetic pulse following a nuclear blast is a real thing. The problem is that the process of creating an EMP big enough without the devastation of a nuclear warhead is expensive, absurd and not worth the effort. That’s if it even works.

For that, we can’t recommend enough a 2010 series of articles in The Space Review by Yousaf M. Butt, a physicist currently serving as a foreign affairs officer in the State Department’s Space and Advanced Technology office.

“For a large device (greater than 100 kilotons) …. the whole region on the Earth’s surface which is within line-of-sight to the high-altitude explosion will experience the EMP pulse,” he wrote.

Which sounds scary, but there are several important caveats. The higher you detonate a nuclear device, the greater the blast radius. However, the effect of the EMP will be less. Likewise, the smaller the explosive yield, the smaller the EMP and the closer the blast will need to be to the ground to be effective.

Finding that detonation sweet-spot in the Earth’s atmosphere will take countless tests … which no one has done.

The blast Butt described above, one that knocks out the entire electrical system on roughly half the Earth’s surface, could only come from a high-yield thermonuclear warhead attached to an ICBM. So, engaging in the fantasist view, a nuke from Russia or China.

Setting aside the geopolitical gymnastics that must occur to lead to that kind of exchange, if a foreign power detonated a 100 or more kiloton in an electromagnetic attack on America, then the world is at war and there’s little strategic benefit for the aggressor to not just go ahead and nuke a city.

“It doesn’t mean it can’t happen,” Singer told me. “But if the other side is using EMPs we’re moving into thermonuclear war.”

“A weapon of mass destruction is preferable to a weapon of mass disruption,” Butt explained. “A state would be highly unlikely to launch an EMP strike from their own territory because the rocket could be traced to the country of origin and would probably result in nuclear or massive conventional retaliation by the U.S.”

Let’s say the EMP does go off in space above North America. According to the worst case scenario, the attack would fry the Pentagon’s electronics, leaving the U.S. military unable to retaliate.

However, we don’t know what the effects of an EMP might be. Studies conducted by both the Soviet Union and the United States during the Cold War produced dramatically different results every time.

An electromagnetic pulse is a highly unpredictable side effect of a predictably horrifying weapon. “It’s not a weapon we’ve seen past use of. Ever. Literally ever. Nor tests of,” Singer said.

Some countries have attempted to weaponize EMPs in fits and starts, but it remains a byproduct of other weapons systems, including cruise missiles as well as nukes. The idea of North Korea or Iran using a small-yield nuclear device in low atmosphere fails for the same reasons. North Korea can barely manage to cobble together a crude one-kiloton bomb, let alone a device large enough to do significant damage to U.S. infrastructure.

“Serious long-lasting consequences of a one-kiloton EMP strike would likely be limited to a state-sized region of the country,” Butt explained.

“Although grid outages in this region may have cascading knock-on effects in more distant parts of the country, the electronic devices in those further regions would not have suffered direct damage, and the associated power systems far from the EMP exposed region could be re-started.”

So nuclear state actors, both mighty and minor, are out. But what about terrorists? Isn’t it possible for the bad guys to get enough fissile material and construct a bomb?

“Any weapon produced by a terrorist cell would likely be a one of a kind and would have to remain untested. For a terrorist group to then mate this weapon to a ballistic missile and successfully carry out an EMP strike beggars belief,” Butt wrote.

Singer agrees. “But let’s just imagine terrorists somehow get them,” he said. “So, they’re sitting in their cave deciding on their attack. ‘We can either use our nuclear weapon in a completely untested manner, that we don’t know if it will even work, nor the exact damage it will cause, or we can just turn Washington D.C. into a molten mess.’”

“They finally get their dream of dreams, and that’s when they decide to use it in an untested manner that would kill less people … what?”

EMPs are laughable, but the threat of nuclear annihilation is not. It’s strange then that the Republican Party’s platform would pay such special attention to a looming threat of electromagnetic Armageddon.

## Indigenous Regimes

### Rant---1NC

#### Doesn’t solve poverty---1AC Cheng mentions poverty and competition law in passing---says developing countries must pursue “inclusive growth”---they don’t ensure that.

#### No development impact---they list scenarios, but don’t read an internal link or terminal impact---we get new answers when they do.

### Turn---1NC

#### Antitrust enforcement in Africa and developing countries fails---they don’t have enforcement bodies.

#### Their internal link is breaking up food monopolies in Africa---that’s bad---farms guarantee higher food prices.

Tamar **Haspel 14** – farms oysters on Cape Cod and writes about food and science, 9/2. “Small vs. large: Which size farm is better for the planet?” https://www.washingtonpost.com/lifestyle/food/small-vs-large-which-size-farm-is-better-for-the-planet/2014/08/29/ac2a3dc8-2e2d-11e4-994d-202962a9150c\_story.html

1. Small, diversified farms are **less efficient** than large ones. Which means that food grown on them is **more expensive**. Marc Bellemare, an assistant professor in the University of Minnesota’s department of applied economics, calls farmers market produce “luxury goods,” and Tim Griffin, director of the Agriculture, Food and Environment program at Tufts University’s Friedman School of Nutrition Science and Policy, explains the dynamic simply: **economy of scale**. “As the farms get larger, it’s easier to invest in labor-saving machinery, technology and specialized management, and production cost per unit goes down,” he says. It’s **Econ 101**.

Even John Ikerd, professor emeritus of agriculture and applied economics at the University of Missouri and an outspoken advocate of the idea that small organic farms ought to feed the world — an idea Bellemare calls “wishful thinking” — acknowledges that we’d need many more farmers to make that happen, and that **food would be more expensive**. How much more expensive is tough to estimate. Advocates of small-and-local tend to say not much (Ikerd guesses 6 to 8 percent), and skeptics tend to say quite a bit. It would undoubtedly vary significantly by region; areas that are densely populated, where land is expensive, or that have lousy weather, where food is hard to grow, would have higher prices.

### AT: Food---1NC

#### No food impact.

Demarest 15—PhD Researcher at the Centre for Research on Peace and Development [Leila, “Food price rises and political instability: Problematizing a complex relationship,” *The European Journal of Development Research*, Vol. 27, No. 5, p. 650-671, Emory Libraries]

6. Conclusions and Way Forward

While some progress has been made in improving our understanding of the linkages between rising food prices and conflict, several important gaps remain. Firstly, notions of conflict and political instability are often used interchangeably, while these concepts and the relationships between them remain to some extent vague. The ‘food riot’ concept in particular leads to confusion. Although it is popularly seen as a violent rise of the masses, in reality, many peaceful events are gathered under this term, while violence is often committed by the state rather than by hungry consumers. The term also presupposes that food is the central issue at hand, which does not necessarily have to be the case. Many misunderstanding arise from the second gap identified in this paper: the uncritical data gathering based on international news reports. Not only are these remarkably inconsistent, they also make use of classifications which are not scientifically investigated. Finally, causal mechanisms in the relationship between rising food prices and conflict often remain assumptions in the literature and lack empirical foundation. Three crosscutting avenues for improvement therefore exist: better concept definitions, better data gathering, and more focus on contexts.

Clearly defined concepts and categorizations of conflict and instability are a necessary foundation for research on the linkages between rising food prices and conflict. For (food) protests in particular, purposeful categorizations require an enhanced insight in the events that took place on the ground. Local news sources for data gathering can prove to be more reliable than Western (English) media to accomplish this. Event descriptions are also likely to be more detailed in local sources, which allows for a first-hand qualitative analysis of causes and context.

As international food prices are likely to remain high, improving our understanding of the causal mechanisms which can lead to conflict remains crucial. We can draw important lessons from the literature on poverty and conflict, resource scarcity and conflict, and regime transition in Africa. The causal role of economic factors alone has continuously been questioned, and ‘context’ or prevailing political, economic, and social factors play a crucial role in the conflict outcome. The argument that adverse economic shocks seem more of a trigger to conflict rather than an important cause is not particularly remarkable in itself. Yet while many authors acknowledge this, the focus often remains on the trigger. Resource scarcity, climate change, population growth, or food insecurity often remain the starting point of analyses, with researchers consequently tracing the divergent (theoretical) possibilities for conflict. In the end, most admit that these factors do not automatically lead to conflict everywhere, and stress the importance of context. Because the theoretical possibilities for conflict are so large, however, the context factor remains rather understudied with as most agreed upon notions that elements of ‘grievance’ and ‘collective action’ are required.

It is hence important to focus more on the ‘contexts’ that can lead to conflict and, in doing so, to make the distinction between different forms of conflict. This also implies a data collection exercise. Contextual data are currently collected at the aggregate, national level, and only on a yearly basis, which can lead to spurious relations. While the use of these variables is increasingly questioned in civil war studies, we can also doubt their strength in the study of highly localized, one-time events such as riots. I particularly make the case for ‘bringing politics back in’. The policies taken by the government are crucial in the violent escalation of social conflict (e.g. accommodation versus repression), but the only variable currently in use to explain state behaviour seems to be the country-level regime type variable (Polity IV or Freedom House), which is also used with regards to highly localized conflicts. Other ways in which politics matter, can be the strength of the political opposition. The Muslim Brotherhood in Egypt, for example, was probably better organized than other opposition groups to make use of economic unrest.

#### Refugees don’t escalate---Middle East wave disproves.

### AT: Africa Instability---1NC

#### No great power war over Africa---deterrence solves, and resource interests don’t cause escalation

Lloyd Thrall 15, Associate at the RAND corporation, M.A. in international studies and diplomacy, SOAS, University of London, PhD student in War Studies at King’s College London, "China’s Expanding African Relations Implications for U.S. National Security," 2015, <http://www.rand.org/content/dam/rand/pubs/research_reports/RR900/RR905/RAND_RR905.pdf>

There is little credible potential for a Sino-American conflict over resources in Africa. Contrary to popular and perennial assumptions about resource wars, industry and energy analysis sources project adequate supply of conventional hydrocarbons beyond 2035.6 Given reservoir depletion curves, any tightening of supply would be gradual. The adequacy of supply is further augmented when tertiary production and unconventional sources are considered (such as shale and tar sands). U.S. strength in unconventional sources, and potential energy independence, further reduces the likelihood of a conflict. Even in a future with vastly inflated hydrocarbon prices, these costs pale in comparison to those associated with a Sino-American war, the economic costs of which likely fall more heavily on China than the United States.7 Global hydrocarbon resources are distributed via a fungible global market, with many stakeholders and moderate diversity of supply. This enables importing states to buy a predictable supply of hydrocarbons at reasonable and competing prices over long contracts. African sources do not constitute a majority of this supply chain, and supposed victory in a theoretical great-power resource war would not guarantee security of resource supply. In sum, the potential for either China or the United States to be willing to enter war with a nuclear adversary over African oil, let alone other, less valuable resources, is extraordinarily small.8

### AT: CBRNs---1NC

#### No risk of nuke terror.

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

The possibility that small groups could set off nuclear weapons is an alarm that has been raised repeatedly over the decades. However, terrorist groups thus far seem to have exhibited only limited desire and even less progress in going atomic. Perhaps, after a brief exploration of the possible routes, they have discovered that the tremendous effort required is scarcely likely to succeed. One route a would-be atomic terrorist might take would be to receive or buy a bomb from a generous, like-minded nuclear state for delivery abroad. That route, however, is highly improbable. The risk would be too great—even for a country led by extremists—that the source of the weapon would ultimately be discovered. Here, the rapidly developing science (and art) of “nuclear forensics”—connecting nuclear materials to their sources even after a bomb has been detonated—provides an important deterrent. Moreover, the weapon could explode in a manner or on a target the donor would not approve—including, potentially, the donor itself. Almost no one, for example, is likely to trust al Qaeda: its explicit enemies list includes all Middle Eastern regimes, as well as the governments of Afghanistan, India, Pakistan, and Russia. And the Islamic State, or ISIS, which burst onto the international scene in 2014, has alienated just about every state on the planet. Nuclear-armed states are unlikely to give or sell their precious weapons to nonstate actors. Some observers, though, worry about “loose nukes,” especially in post-Communist Russia—meaning weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. However, as a former director at the Los Alamos National Laboratory notes, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.” Careful assessments have concluded that it is unlikely that any nuclear devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because nuclear weapons require continual maintenance. Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that will destroy the bomb if it is tampered with. Bombs can also be kept disassembled with the component parts stored in separate high-security vaults (a common practice in Pakistan). Two or more people and multiple codes may be required not only to use the bomb, but also to store, maintain, and deploy it. There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray. However, even under those conditions, nuclear weapons would still have locks or be disassembled and would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory. Most analysts believe that a terrorist group’s most promising route would be to attempt to make a bomb using purloined fissile material— plutonium or highly enriched uranium. However, as the Gilmore Commission—the advisory panel on terrorism and weapons of mass destruction—stressed, building and deploying a nuclear device presents “Herculean challenges.” The process requires a lengthy sequence of steps; if each is not fully met, the result is not simply a less powerful weapon, but one that can’t produce any significant nuclear yield at all or can’t be delivered. First, the terrorists would need to steal or illicitly purchase the crucial plutonium or highly enriched uranium. This would most likely require the corruption of a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on the terrorists or, out of either guile or incompetence, furnish them with material that is useless. Any theft would also likely trigger an intense international policing effort. Second, to manufacture a bomb, the terrorists would need to set up a large and well-equipped machine shop and populate it with a team of highly skilled and extremely devoted scientists, tec

hnicians, machinists, and managers. These people would have to be assembled and retained for the monumental task while generating no consequential suspicions among friends, family, or police about their sudden and lengthy absence from normal pursuits back home. Throughout, the process of fabricating a nuclear weapon would require that international and local security services be kept perpetually in the dark, and that no curious locals, including criminal gangs, get wind of the project as they observe the constant coming and going of outside technicians over the months or even years it would take to pull off. Physicists who have studied the issue conclude that fabricating a nuclear weapon “could hardly be accomplished by a subnational group” because of “the difficulty of acquiring the necessary expertise, the technical requirements (which in several fields verge on the unfeasible), the lack of available materials and the lack of experience in working with these.” Others stress the “daunting problems associated with material purity, machining, and a host of other issues,” and conclude that the notion that a terrorist group could fabricate an atomic bomb or device “is far-fetched at best.” Finally, the resulting weapon, likely weighing a ton or more, would have to be moved to a target site in a manner that did not arouse suspicion. Then a skilled crew would have to set off the improvised and untested nuclear device, hoping that the machine shop work has been perfect, that there were no significant shakeups in the treacherous process of transportation, and that the device, after all the effort, isn’t a dud. The financial costs of such an extensive operation could easily become monumental: expensive equipment to buy, smuggle, and set up and people to pay—or pay off. Any criminals competent and capable enough to be effective allies in the project would likely discover boundless opportunities for extortion and be psychologically equipped by their profession to exploit them. Khalid Sheikh Mohammed, the designated “mastermind” behind the 9/11 attacks, reportedly said that al Qaeda’s atom bomb efforts never went beyond searching the Internet. Even so, that raises the popular notion that the Internet can be effective in providing operational information. However, that belief seems to be severely flawed. Researcher Anne Stenersen finds that the Internet is filled with misinformation and error and with materials hastily assembled and “randomly put together,” containing information that is often “far-fetched” or “utter nonsense.” Some members of al Qaeda may have dreamed about getting nuclear weapons. The only terrorist group to actually indulge in such dreams has been the Japanese millennial group Aum Shinrikyo. However, its experience can scarcely be much of an inspiration to other terrorist groups. Aum Shinrikyo was not under siege or even under close watch, and it had some 300 scientists in its employ, an estimated budget of $1 billion, and a remote and secluded haven in which to set up shop. After making dozens of mistakes in judgment, planning, and execution in a quest for nuclear weapons, it abandoned its efforts. The rise of ISIS in 2014 does not alter these conclusions. The vicious group is certainly a danger to the people under its control and to fellow Muslims and neighboring Christians. It is actually more visible—that is, easier to find—than al Qaeda in that it seeks to hold and govern physical territory, a task that is increasingly difficult in a hostile world. In the process, it is unlikely to be able to amass the finances, the skills, and the serenity to go atomic. The notion that terrorists could come up with a nuclear weapon seems remote. As with nuclear proliferation to countries, there may be reason for concern, or at least for interest and watchfulness. But alarm and hysteria are hardly called for.

#### No nuke terror NOR retal

---Technical barriers, op costs, organizational schisms, deterrence

Christopher **McIntosh &** Ian **Storey 18**. McIntosh is visiting assistant professor of political studies at Bard College; Storey is a fellow at the Hannah Arendt Center for Politics and Humanities at Bard College. 06/01/2018. “Between Acquisition and Use: Assessing the Likelihood of Nuclear Terrorism.” International Studies Quarterly, vol. 62, no. 2, pp. 289–300.

When looked at in isolation, each of the three areas of potential loss presents significant disincentives for immediate attack. In combination—as they would be considered in practice—the higher strategic value of available alternatives appears decisive. In other words, even if one reads our analysis as affirming the importance of nuclear acquisition, when considering competing options and the dangers that attach to any detonation attempt, nuclear attack is highly unlikely. Strategic Opportunity Costs Future opportunities available for “using” a nuclear weapon are effectively foreclosed depending on the aggressiveness of the option a group chooses. The two-by-two matrix of nuclear strategies in Figure 1 is only a rough guide encompassing many possible permutations in the nuclear sphere. The organization always retains non-nuclear options, even once they acquire nuclear weapons. As evidenced by the Cold War and in Kargil, the stability-instability paradox holds empirical weight. Nuclear acquisition by two opposing actors does not necessarily foreclose conventional and/or asymmetric attacks (Cohen 2013; Kapur 2005). Given the unique relationship between a state and terrorist organization, we can expect similar and even exacerbated levels of instability. This can expand even beyond aggression. Remaining options range all the way from the pacific—pursuing negotiations, cooption, entrance into the legitimate political arena (for example, Sinn Fein)—to heightened conventional attacks and the usage of non-nuclear forms of WMDs. This last point is worth emphasizing. Even in the remote case where an actor successfully acquires a nuclear weapon and primarily seeks raw numbers of casualties—whether due to outbidding or audience costs—other forms of WMDs are likely to be more appealing. As Aum Shinrikyo indicates, this is particularly the case for the group that overcomes the inevitable political and technological hurdles (Nehorayoff et al. 2016, 36–37). For these groups, chemical, biological, and radiological weapons (CBRW) are considerably easier to acquire, use, and stockpile. This is especially true when considered over time, rather than a single operation.18 While there are certainly downsides to CBRWs vis-à-vis nuclear weapons (delivery may paradoxically be easier and the maintenance risks comparatively smaller), they are undoubtedly easier to procure and produce (Zanders 1999). More importantly, CBRWs are perceived as easier to produce and thus likely to be viewed by targets as iterable. Unlike a nuclear attack, CBRW threats are more credible because a single CBRW attack can likely precipitate an indefinite number of follow-ups. In addition to the problem of iterability, a terrorist organization must always worry about the possible ratchet effect of an attack—a problem Neumann and Smith (2005, 588– 90) refer to as the “escalation trap.” A terrorist organization is different than a state at war because it manipulates other actors primarily through punishment. Campaigns are a communicative activity designed to convince the public and the leaders that the status quo is unsustainable. The message is that the costs of continuing the target state’s policy (such as the United States in Lebanon, France in Algeria, or the United Kingdom in Northern Ireland) will eventually outweigh the benefits. Once an organization conducts a nuclear attack, it lacks options for an encore. Not even the most nightmarish scenarios involve an indefinite supply of weapons. If a single attack plus the threat of one or two others does not induce capitulation, the organization might unwittingly harden the target state’s resolve. The attack could raise the bar such that any future non-nuclear attack constitutes a lessening of costs vis-à-vis the status quo. There are also heavy opportunity costs involved in pursuing, developing, and maintaining a nuclear capacity, let alone actually deploying and delivering it. As Weiss puts it, “even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects” (Weiss 2015, 82). Organizational Survival Terrorist organizations are not monolithic entities, nor are they wholly self-sufficient actors. Historically speaking, these groups consider the public reception of their attacks in a complex manner. As Al Qaeda, the Palestine Liberation Organization (PLO) of the 1970s, the IRA, and anarchist groups of the nineteenth and twentieth centuries all demonstrate, these groups’ thinking about public reception is nuanced and complex, regardless of time or place. We focus on two types of audiences that would be affected by decisions to attack: those internal to the group itself, and their own broader public. While many claim that terrorists are undeterrable, the argument misconstrues the relational dynamics between a terrorist organization, target state, international community, and the internal dynamics of the organization itself (Talmadge 2007). It is undoubtedly the case that deterring a terrorist organization in the traditional sense is difficult (Whiteneck 2005; Mearsheimer and Walt 2003). Many lack a recognized territorial base, work on the fringes of the global economy, and are internally structured to be difficult to combat directly. Nearly all possess some permutation of these factors. Combined with the symbolic importance of even relatively small terror attacks—especially given the role of international media—physically denying a group the ability to conduct attacks is uniquely challenging. It is minimally a vastly different proposition than precluding a state’s ability to successfully invade its neighbor or conduct ongoing missile strikes.19 Despite these concerns, there are important reasons deterrence can and empirically does work in the case of terrorist organizations. This is especially possible when the state-terrorist relationship is not zero-sum and the target retains some influence over the realization of the group’s eventual goals (e.g., by denying the group access to territory or withholding international recognition) (Trager and Zagorcheva 2006, 88–89). Nuclear attack presents two significant threats to the organization’s continued existence: internal threats of disintegration and external threats to their continued operations and survival. Terrorist organizations are not unitary, homogenous organizations. This is especially true for groups possessing the size and competence likely necessary for operational nuclear capacity. As many have noted, the terrorist organizations of the present are vastly different from those Marxist- Leninist groups that terrorized Europe and the United States in the 1970s and early 1980s. There is a well theorized psychological value of the organization to individual terrorists themselves (Post 1998), but there is more to the organizational valuation of survival than captured in this atomistic picture. Modern, large-scale terrorist organizations are typically heavily intertwined with the social fabric of the groups from which they originate (Cronin 2006; Hoffman 2013). Beyond significant networks of financial connections, accounts, and moguls (Hamas, for example, draws funding from a massive international system of mosque-centered charities, while the IRA’s extensive connections to the Irish diaspora in the United States were well documented), many terrorist organizations build extensive networks of sub-organizations that tie them to the communities in which they are based. Hezbollah, like the IRA, is internally divided between a military arm and a political arm and has run an extensive network of community schools, medical care centers, and religious outreach groups. Together they are designed to embed the organization in the social life of (predominantly southern) Lebanon’s Muslim population and provide Hezbollah with fresh recruits (Parkinson 2013). The group’s persistence as a dominant political force in southern Lebanon nearly two decades after the initial Israeli decision to withdraw demonstrates terrorist organizations grow to exceed their initial military objectives. The spread of Al Qaeda and its affiliates has followed a similar path. Maintaining the continued support of these multiple audiences is therefore a crucial consideration for these organizations. While these audiences could conceivably be more casualty-acceptant than the individuals deciding the group’s operations, the broader public will usually moderate extreme behavior. The literature assessing so-called “radical- ization” and violence by individual actors emphasizes that there isn’t a one-to-one relationship between ideological extremism and acceptance of extraordinary violence in pursuit of those goals (McCauley and Moskalenko 2014; Jurecic and Wittes 2016). It is important to resist the assumption that a politically extreme ideology automatically corresponds to shared assumptions regarding casualty-acceptance. Some argue that the move toward “mass-casualty” terrorism obviates these concerns. Aside from the fact that the trend line is either flat or receding in terms of the death toll of individual attacks (even if campaigns themselves might be becoming deadlier), there is an orders of magnitude distinction in casualties between a nuclear attack and even the 2001 attack in the United States. While the psychological restraints on nuclear use among states do not translate precisely to this context, there is good reason to believe that transgressing the longstanding nuclear taboo would have dramatic and negative effects on broader public support. In an urban environment, the media would inevitably capture the attack and its gruesome after-effects in photography or video. This imagery would be inconceivable, ubiquitous, and inescapable. Even if supporters accept a highly retributive mentality, or as Hamid (2015) argues about the Islamic State, actively accept the potential of death, this would pose a severe problem for all but the most extreme supporters.20 Beyond these supporters, a nuclear attack affects the internal dynamics of the terrorist organization in multiple ways. There could be divisiveness regarding the most effective use of the weapon. This would be magnified by the scale of the opportunities and perceived opportunity costs. Such debates have the potential to splinter the organization as a whole (Cronin 2009, 100–02). Factional conflict in terrorist organizations appears frequently over questions of goals and tactics (Crenshaw 1981; Chai 1993). A decision to attack with a nuclear weapon risks considerable internal alienation over a variety of issues—targeting decisions, method of attack, campaign goals, potential deaths of supporters, and the domestic and international response (Mathew and Shambaugh 2005, 621–22). Finally, a nuclear attack would exponentially raise the threat to each individual who composes the extended organization. Post-nuclear attack, the greatest strengths of a terrorist organization—its lack of material territory, economy, or overt institutions and reliance on individuals—could turn into its greatest weaknesses (Eilstrup-Sangiovanni and Jones 2008). Currently, a wealthy financier found to have ties to a terrorist group would be monitored for intelligence, arrested, and brought up on criminal charges. Post-nuclear attack, the consequences would be immediate and rather worse. Externally, in a world post-nuclear attack, international cooperation would be instant and deep. One of the only international treaties to even define a terrorist in international law post-2001 has been the Nuclear Terrorism Convention (Edwards 2005). A nuclear attack would be far outside the norm of international politics. It would disrupt the dominance of state-actors and likely stimulate unparalleled cooperation to apprehend the responsible parties to prevent future attacks. Moreover, many large terrorist organizations require (some) tacit acquiescence by a host state. Even those with hostile host states have territory where they remain relatively unaffected by local governments (Korteweg 2008). Post-nuclear attack, these host states face an enormous incentive to find the actors responsible before the target state does. After an attack, regimes would find it difficult to claim that they “didn’t know” or “couldn’t stop them.” Claims of corruption or ineffective institutions would be unlikely to find much sympathy. Faced with potential organizational extinction itself, a host state/government will likely be much less committed to the survival of the terrorist group. This is likely to vary significantly from how they might otherwise behave after a more conventional attack. For these states, there would be a real fear of “Talibanization” and ruthless attempts at regime change post-attack. From the perspective of the group, it would know that it could be facing a unified international community and the removal of tacit state support. It would take a particularly confident leadership to presume it could continue to function post-attack without massive disruptions. Most strategic actors are risk-averse when facing the potential of complete elimination. There is little reason to believe terrorist groups would act any differently.

### AT: SDGs---1NC

#### No impact to failed states.

Mazarr 14—Professor of National Security Strategy at the National War College [Michael, “The Rise and Fall of the Failed-State Paradigm,” *Foreign Affairs*, Vol. 93, No. 1, Jan/Feb, p. 113-121, Emory Libraries]

THE DECLINE OF A STRATEGIC NARRATIVE

The practical challenges of state-building missions are now widely appreciated. They tend to be long, difficult, and expensive, with success demanding an open-ended commitment to a messy, violent, and confusing endeavor -- something unlikely to be sustained in an era of budgetary austerity. But the last decade has driven home intellectual challenges to the concept as well.

The threat posed by weak and fragile states, for example, turned out to be both less urgent and more complex and diffuse than was originally suggested. Foreign Policy’s Failed States Index for 2013 is not exactly a roster of national security priorities; of its top 20 weak states, very few (Afghanistan, Iraq, and Pakistan) boast geostrategic significance, and they do so mostly because of their connection to terrorism. But even the threat of terrorism isn’t highly correlated with the current roster of weak states; only one of the top 20, Sudan, appears on the State Department’s list of state sponsors of terrorism, and most other weak states have only a marginal connection to terrorism at best.

A lack of definitional rigor posed a second problem. There has never been a coherent set of factors that define failed states: As the political scientist Charles Call argued in a powerful 2008 corrective, the concept resulted in the “agglomeration of diverse criteria” that worked to “throw a monolithic cloak over disparate problems that require tailored solutions.” This basic methodological flaw would distort state-building missions for years, as outside powers forced generic, universal solutions onto very distinct contexts.

The specified dangers were never unique to weak states, moreover, nor would state-building campaigns necessarily have mitigated them. Take terrorism. The most effective terrorists tend to be products of the middle class, often from nations such as Saudi Arabia, Germany, and the United Kingdom, not impoverished citizens of failed states. And terrorist groups operating in weak states can shift their bases of operations: if Afghanistan becomes too risky, they can uproot themselves and move to Somalia, Yemen, or even Europe. As a result, “stabilizing” three or four sources of extremist violence would not render the United States secure. The same could be said of threats such as organized crime, which finds comfortable homes in functioning but troubled states in Asia, eastern Europe, and Latin America.

As the scholar Stewart Patrick noted in a 2006 examination of the purported threats issuing from weak states, “What is striking is how little empirical evidence underpins these assertions and policy developments. Analysts and policymakers alike have simply presumed the existence of a blanket connection between state weakness and threats to the national security of developed countries and have begun to recommend and implement policy responses.”

And although interconnectedness and interdependence may create risks, the dangers in such a world are more likely to come from strong, well-governed states with imperfect regulations than weak ones with governance deficiencies. Financial volatility that can shake the foundations of leading nations and cyberattacks that could destabilize energy or information networks pose more immediate and persistent risks than, say, terrorism.

## 2NC

### Regs CP

#### 1. “Do both” means FTC resources---antitrust blockage means CFIUS won’t interfere.

Jayden R. Barrington 19. J.D. Candidate 2020, University of San Diego School of Law; B.B.A. 2017, University of San Diego. “CFIUS Reform: Fear and FIRRMA, an Inefficient and Insufficient Expansion of Foreign Direct Investment Oversight”. 21 Transactions: TENN. J. Bus. L. 77 (2019).

This structure gave the President fifteen days to make a final determination in the form of a Presidential Order .8 FINSA added criteria for the President to take into consideration and ensured that the President "is under no obligation to follow the recommendation of the Committee to suspend or prohibit an investment." 9 Nevertheless, before blocking a transaction, the President still needed to determine that (1) other laws did not sufficiently protect the country, and (2) that there existed "credible evidence" that if the transaction were to be executed, it would impair national security.80 For example, if the deal would otherwise be blocked by the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) due to antitrust concerns, then there is no reason CFIUS must intervene and the first requirement would not be met. The second requirement of credible evidence that national security would suffer is more subjective. An example of a deal that may not meet this criteria is the foreign sale of a company like Coca-Cola or Levi's; though loved American brands, their foreign ownership would not likely create realistically foreseeable threats to matters of national security.

#### 2. “Antitrust” and “national security” are distinct agents.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

So should we use antitrust to pursue national security goals, or forbear in enforcing it because of them? As the U.S. Constitution itself makes clear, there is no responsibility more essential for a government than the protection of its citizens. My humble premise is that, like other non-competition considerations, antitrust is an imperfect tool. And, when it comes to national security, the U.S. government has other tools. We have, for example, separate and distinct systems requiring mergers to be notified to one set of enforcers who monitor antitrust concerns and to another set of government officials responsible for national security review. This is not a bug, but a feature, of our government and economic policies more generally.

The Committee on Foreign Investment in the United Stated (CFIUS) is authorized to review national security implications of certain cross-border transactions.23 Note that CFIUS is not an antitrust tool, but a national security one. And a very effective one at that. Look no further than Broadcom’s recent (unsuccessful) bid for Qualcomm.

#### 2. We PIC out of “antitrust” and “anticompetitive”---it is the topic debate.

Reuters 15. "Pentagon Eyes Bill to Block Mergers and Acquistions for National Security Reasons". Newsweek. 12-22-2015. https://www.newsweek.com/pentagon-bill-mergers-and-acquisitions-weapons-national-security-ash-carter-408412

WASHINGTON (Reuters) - The Pentagon and other U.S. government agencies should complete a legislative proposal in coming weeks to let regulators block proposed mergers for national security reasons, instead of just antitrust concerns, a top official said on Tuesday. Defense Undersecretary Frank Kendall, who oversees arms weapons acquisitions and industrial base issues for the Pentagon, made the comments in an interview, after first mentioning the legislative push in September. In September he raised concerns about further consolidation among the biggest players in the U.S. weapons industry, warning that big weapons makers were not hesitant to use the power that came with increased size for their own corporate advantage. The comments came days after the U.S. Justice Department approved Lockheed Martin Corp's $9 billion takeover of Sikorsky Aircraft from United Technologies Corp, one of the biggest acquisitions in the weapons industry in years. At the time, Kendall said the U.S. Justice Department cleared Lockheed's acquisition of the helicopter maker because there was no direct anti-competitive issue, but the Pentagon did not want to see its industrial base whittled down to two or three very large suppliers. On Tuesday, Kendall said the Pentagon was working with the Justice Department and other agencies on a proposal that would add a national security provision to current law, much as mergers in other industrial sectors are subject to a "public interest" provision since they serve the nation. He said the proposal should be wrapped up soon and sent to lawmakers for their consideration. Kendall said the prospects for getting the legislation passed in a presidential election year were unclear, but it was important to address the issue. "It's a debate we should have," he said.

#### 1. Priority: National security supersedes competition law.

Spencer Weber Waller 19. John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law. “Antitrust and Democracy”, 46 FLA. St. U. L. REV. 807 (2019).

A statute which gives the executive branch, or a ministry, the explicit power to sacrifice competition for national security or some other significant national interest is equally defensible in terms of democratic values, regardless of the wisdom of any particular decision under those powers. For example, numerous jurisdictions have public interest standards in their merger laws allowing the approval or rejection of transactions on grounds other than their competitive effects. 145

While the United States does not have public interest standards in its merger regime, it does have three statutes allowing noncompetition factors to supersede competitive analysis in order to achieve national security objectives. First, mergers may be blocked on national security grounds, even if cleared by the competition agencies. 1 4 6 Second, the United States enacted Section 232 of the Trade Act of 1962, which allows the Secretary of Commerce to conduct investigations to determine the effect of imports on any article of the national security of the United States. 147 Finally, the Defense Production Act of 1950 (DPA) allows the President to exempt agreements between private parties from the application of the antitrust laws where such action was taken for the national defense. 1 4 8

#### 2. Signaling: CFIUS declarations prevent bad deals.

Commissioner Noah Joshua Phillips 20. “Championing Competition: The Role of National Security in Antitrust Enforcement”. The Hudson Institute (Virtual) <https://www.ftc.gov/system/files/documents/public_statements/1584378/championing_competition_final_12-8-20_for_posting.pdf>

Even the threat of a CFIUS action can scuttle a deal that is problematic for national security, as it did in 2005, when China National Offshore Oil Company (CNOOC) proposed to acquire Unocal31; or in 2006, when Dubai Ports World considered purchasing the right to operate six major U.S. ports, including terminals in the New York/New Jersey area, Philadelphia, and New Orleans.32

CFIUS is effective and efficient, and Congress—led by my former boss, U.S. Senator John Cornyn—added to the quiver in August 2018 with the Foreign Investment Risk Review Modernization Act (FIRRMA). FIRRMA broadened CFIUS’s jurisdiction to include investment in a U.S. business that “maintains or collects personal data of United States citizens that may be exploited in a manner that threatens national security.”33 In the spring of last year, CFIUS informed the Chinese company Kunlun that its ownership of the popular gay dating app, Grindr, constituted a national security risk, prompting Kunlun to divest the app.34 CFIUS was apparently motivated by concerns that the Chinese government could blackmail individuals with security clearances or use its location data to help unmask intelligence agents.35

#### 3. We fiat the executive---not reviewable.

Aimen Mir et al 19. Aimen Mir, Partner. Christine Laciak, Special Counsel. Sarah Melanson, Associate. "Global Competition Review". No Publication. 9-20-2019. https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2020/article/united-states-cfius-review

While CFIUS is charged with reviewing a transaction and imposing mitigation measures where warranted, Section 721 grants the President, and only the President, the authority to suspend or prohibit a covered transaction. Therefore, if CFIUS seeks to prohibit a transaction and the parties are unwilling to voluntarily abandon the transaction, CFIUS must refer the transaction to the President for action. Though unlikely to occur in practice, if CFIUS fails to reach a consensus for a particular case, CFIUS must also send a report outlining the divergent opinions and recommendations to the President. To exercise the authority to suspend or prohibit a transaction, the President must find both that there is credible evidence that a ‘foreign interest exercising control might take action that threatens to impair the national security’ and that other laws do not, in the President’s judgement, ‘provide adequate and appropriate authority’ to protect national security. Presidential action is rare, partly because mitigation measures often address national security concerns, and partly because parties typically abandon a transaction before CFIUS actually refers the case to the President with a prohibition recommendation.

Determinations by the President under Section 271 are not subject to judicial review. The exemption from judicial review was confirmed by the district court for the District of Columbia in 2013 when Ralls sought to have a presidential order requiring it to divest its interest in certain Oregon wind farms overturned by the court. The district court ruled that the merits of the President’s decision were not subject to judicial review and that a party that completes a covered transaction without clearance assumes the risk of doing so. 26 On appeal, the Court of Appeals for the District of Columbia Circuit agreed that the President’s decision was not subject to judicial review but held that the ‘presidential order deprived Ralls of constitutionally protected property interests without due process of law’ and instructed that, upon remand, Ralls be given access to unclassified evidence in support of the decision. 27 On remand, the District Court ordered CFIUS to provide all unclassified information on which it relied for its decision, afford Ralls an opportunity to respond to that information, and provide Ralls’ response to the information along with CFIUS’ updated recommendation to the President. 28 The parties ultimately resolved the case via settlement. Although CFIUS determinations are theoretically reviewable, this has limited practical implications because CFIUS concerns are generally either resolved through mitigation that the parties voluntarily undertake or the matter is referred to the President, whose decision is not reviewable.

#### 4. No judicial review

Jayden R. Barrington 19. J.D. Candidate 2020, University of San Diego School of Law; B.B.A. 2017, University of San Diego. “CFIUS Reform: Fear and FIRRMA, an Inefficient and Insufficient Expansion of Foreign Direct Investment Oversight”. 21 Transactions: TENN. J. Bus. L. 77 (2019).

Unfortunately for parties, the President's reasoning is still not subject to judicial review; parties can only challenge final decisions by the President on constitutional grounds.219 Recall that the restrictions applied in Ralls Cop; FIRRMA does not give grounds to reevaluate this precedent.220 For the parties seeking recourse, this likely means that the ultimate outcome of their case will remain unaltered despite filing a civil action as the statute permits because the CFIUS structure leaves the final determination to the discretion of the President. Realistically, a suit will probably incur further unwanted fees associated with the failed transaction and still leave the practical result of the deal unchanged.

## FTC DA

### Impact

#### **1. Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### 2. Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

### AT: Courts No Link

#### The plan is enforced by the FTC.

#### 1. FTC covers all core antitrust law.

Emilia R. Rubin 19. J.D. Candidate, University of California, Hastings College of the Law. “The Heavy Burden of a Lighter Touch Framework The Inadequacy of Antitrust Laws as a Substitute for Net Neutrality.” Summer 2019. Hastings Science and Technology Journal 10.2, 229-261.

The FCC additionally justified repealing the 2015 Order by relying on the ability of both the FTC and private citizens to bring antitrust actions challenging any anticompetitive conduct in the internet sector.115 The FTC enforces three laws with respect to antitrust law: the Sherman Act, the FTC Act, and the Clayton Act. These are the three core federal antitrust laws in effect today. The Sherman Act outlaws “every contract, combination, or conspiracy in restraint of trade,” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” The standard for assessing business conduct under the Sherman Act is a two-pronged approach: (1) per se illegality if the conduct is considered “so harmful to competition that they are almost always illegal;” and (2) rule of reason analysis if the conduct does not fall into an established anticompetitive category articulated under law.116

#### 2. They’re tasked with enforcing antitrust laws.

Katie Canales 20. Tech reporter at Business Insider, 12/9/20. “Facebook was just hit with 2 big antitrust lawsuits. Here's what 'antitrust' means and how 'trust-busting' laws attempt to keep the biggest firms in US history from growing too powerful.” https://www.businessinsider.com/what-is-antitrust-laws-big-tech-hearing-2020-7

There are three core federal US antitrust laws you should care about: the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. The last would lead to the creation of the Federal Trade Commission, which is the main government entity tasked with enforcing antitrust laws today.

#### 3. They have authority over competition policy.

MARIANELA LOPEZ-GALDOS 21. Global Competition Counsel at the Computer & Communications Industry Association, 7/28/21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils.” https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

Let’s get started by understanding why the FTC’s antitrust policy rerouting has raised a lot of questions. The FTC is one of the two federal agencies that has authority over competition, and consumer protection matters. Throughout its enforcement, advocacy and regulatory activities, the FTC has endorsed competition policy that has inured to the benefit of consumers in the U.S. economy.

### AT: Uniqueness Overwhelms---2NC

#### Uniqueness doesn’t overwhelm. Ev is from 8/16---law firm---no access to congress---72 intiitative that wont pass

#### \*1. This is our brink argument---the FTC’s managing its caseload, but only barely---the aff is a bolt from the blue, unplanned expansion of antitrust enforcement that forces tradeoff with privacy.

#### \*2. Current enforcement is all talk

JED GRAHAM 9/16/21. Writes about economic policy for Investor's Business Daily.

Khan is clearly using her bully pulpit to the utmost, trying to dissuade merger talks from reaching fruition.

But right now it's all talk. She has turned a few heads, but the S&P 500 and Big Tech leaders have kept cruising. Facebook stock is up 11% since Khan took the FTC's helm on June 15, while Apple has climbed 15% and Google stock 18%. That's despite reports that the Justice Department is preparing to file a second Google antitrust suit over its ad dominance.

The new antitrust enforcement regime may not change all that much "until they show that they can sue and win," Kovacic said.

#### \*3. Agency’s streamlining current enforcement in order to balance its priorities

FTC 9/14/21. Media Contact Peter Kaplan. “FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload.” https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas

At the joint recommendation from its Bureau of Consumer Protection and Bureau of Competition, the Federal Trade Commission voted to approve and make public a series of resolutions that will enable agency staff to efficiently and expeditiously investigate conduct in core FTC priority areas over the next ten years.

The Bureaus recommended that the Commission authorize eight new compulsory process resolutions in these essential areas: (1) Acts or Practices Affecting United States Armed Forces Service Members and Veterans; (2) Acts or Practices Affecting Children; (3) Bias in Algorithms and Biometrics; (4) Deceptive and Manipulative Conduct on the Internet; and (5) Repair Restrictions. (6) Abuse of Intellectual Property; (7) Common Directors and Officers and Common Ownership; and (8) Monopolization Offenses.

“These resolutions enable the FTC to take swift action against a whole host of illegal conduct in important areas of concern to the Commission,” said Holly Vedova, Acting Director of the Bureau of Competition. She noted that, “Companies engaging in conduct implicated by these resolutions should be forewarned: the FTC looks forward to aggressively using these resolutions and will not hesitate to take action against illegal conduct to the fullest extent possible under the law.”

“Harmful practices – especially those targeting children, veterans, and marginalized communities – will not be tolerated by this Commission,” said Samuel Levine, Acting Director of the Bureau of Consumer Protection. “Today’s resolutions ensure our staff can rapidly respond to allegations of abuse and fight fraud without delay.”

Specifically, the resolutions approved by a Commission vote of 3-2 will allow:

Service members and Veterans: harmful business practices directed at service members and veterans are a source of significant public concern, and, now, FTC staff will be able to expeditiously investigate any allegations in this important area.

Children under 18: harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: this omnibus expands a previous omnibus resolution on deceptive practices, which expired on Aug. 1. The existing resolution, has enabled the FTC to develop investigations and bring cases in a variety of areas including day trading services, tech support scams, the BOTS Act, payment processing, and the deceptive marketing of goods and services online, including pandemic-related goods like fake Clorox products and face masks. In addition to the areas covered by the existing resolution, this expanded version covers the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

Repair Restrictions: enhances the FTC’s ongoing investigations into restrictions on repair and builds on the FTC’s recent Policy Statement on Right to Repair. It would cover a wide range of anti-consumer and anti-competitive abuses and facilitate staff’s impending investigation of violations of the Magnuson Moss Warranty Act’s anti-tying provisions.

Abuse of Intellectual Property: allows staff to investigate abuses of intellectual property rights. Conduct involving abuse of intellectual property rights has been a source of much anticompetitive and deceptive conduct in many different areas, including pharmaceuticals, technology and gasoline refining, and this omnibus will allow staff to expeditiously investigate allegations in this area.

Common Director and Officers and Common Ownership: facilitates investigations of both ownership stakes in competing companies that may be anticompetitive as well as interlocking directorates that may violate Section 8 of the Clayton Act, 15 U.S.C. § 19. Interlocking directorates and common ownership continue to raise significant competitive concerns.

Monopolistic Practices: Market power abuses by tech companies and other large companies are rightly a source of bipartisan concern. This omnibus will allow staff to more expeditiously investigate market power abuses by dominant firms that are precluding businesses and entrepreneurs from being able to compete, particularly in digital markets.

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### \*4. Thumpers are priced in.

William C. MacLeod 7/2/21. One of the top rated Antitrust Litigation attorneys in Washington, DC. “Chopra, Khan, Slaughter Take Control of the Federal Trade Commission.” https://www.adlawaccess.com/2021/07/articles/chopra-khan-slaughter-take-control-of-the-federal-trade-commission/

With an unprecedented attack on policies the Federal Trade Commission had long embraced, the new majority of Democratic Commissioners revealed a bold enforcement agenda that would circumvent Supreme Court decisions and avoid Congressional limits.

It was a meeting like none the Federal Trade Commission has ever held. On one week’s notice, the Commission adopted new rules to impose civil penalties on substandard Made-in-USA claims, removed judges and safeguards from rulemaking proceedings, rescinded its 2015 enforcement policy statement on unfair methods of competition, and granted staff more authority to issue subpoenas and civil investigative demands. The vote on every issue followed party lines. Republican Commissioners, Noah Phillips and Christine Wilson, voted against all, and the Democratic Commissioners, Chopra, Khan, and Slaughter, rejected all amendments. Chair Khan announced that public meetings will become regular events at the FTC.

Made in USA Claims

Commissioner Chopra took the lead on the Made-in-USA (MUSA) rule, which would impose civil penalties on claims that do not meet FTC standards for domestic content, whether those claims appear on labels or in marketing. He criticized the Commission for years of allegedly allowing deceptive claims to persist and wrongdoers to escape fines. Imposing fines, he said, was one way of recovering the power the Commission was denied in the Supreme Court’s decision in AMG Capital Management v. FTC, which held that Section 13(b) of FTC Act did not authorize the Commission to obtain monetary relief.

Phillips opposed the rule, saying that Congress had not given FTC the authority to cover off-label claims; it had authorized MUSA rules only for product labels. Unless and until Congress granted authority for expedited rulemaking on advertising claims, which Congress is now considering, he insisted that the FTC was bound to use the more restrictive Magnusson-Moss procedures. Wilson objected to the short notice announcing the meeting, objected to the exclusion of staff from the meeting, and warned that it was unwise to disregard a unanimous Supreme Court that had just admonished the Commission for exceeding its authority to obtain money in consumer protection cases.

Expediting Rulemaking

Foreshadowing an ambitious regulatory agenda was a motion to streamline new rules under Section 18 of the FTC Act. The motion would remove the chief administrative law judge from the role of presiding officer in rulemakings. The FTC Chair would preside. The motion also proposed eliminating the requirement of a staff report to accompany a rule recommendation. Slaughter said these were unnecessary “self-imposed” limits. Chopra praised the proposal for helping end the era of “perceived powerlessness” at the FTC

Phillips and Wilson objected, citing concerns that removing the judge would threaten the independence of the rulemaking process – an extensive fact-finding exercise – and lend support to challengers who claim that FTC rules are politically motivated. As for staff reports, Phillips remarked that these gave the Commissioners and the public some confidence that a rule would not inflict unnecessary harm on the economy. Wilson reminded her colleagues that zealous rulemaking in the 1970s precipitated an existential crisis for the agency. It closed its doors after public resistance and widespread ridicule prompted Congress to defund the FTC. Not until the Commission promised a return to responsible enforcement was it allowed to reopen. The FTC delivered on that promise with a series of policy statements clarifying unfair acts and practices, illegal deception, and necessary substantiation for advertising claims.

Wilson proposed posting the procedural changes for comment. It failed 3-2. Phillips proposed retaining the chief judge and the staff report. It also failed to attract a Democratic vote. Rulemakings without a judge and without a staff report passed without a Republican vote.

Rescinding the Competition Policy Statement

In a sweeping departure from a bipartisan antitrust policy, the Commission rescinded its 2015 Policy Statement on Unfair Competition. Khan argued that the FTC should not have to show a likelihood of harm to competition in order to declare conduct unfair. In her view, the FTC Act was intended to circumvent the Supreme Court’s adoption of the Rule of Reason in antitrust cases – a requirement that condemned restraints of trade only when their anticompetitive effects outweighed the procompetitive benefits. The Rule of Reason made it too hard to prove violations, said Khan, and the FTC’s policy statement improperly confined the agency to an enforcement policy indistinguishable from the standards that DOJ applied.

Wilson regarded the rescission as an abandonment of the consumer welfare standard, the framework of antitrust analysis for half a century. She expressed fears that if competition policy were not designed to benefit consumers, it could be coopted by special interests. She added that when the FTC had failed to apply a standard consistent with the antitrust laws in the past, its decisions had often been reversed on appeal. (The FTC lost a string of appeals in the 1980s when it attempted to prohibit refusals to deal, price discrimination that might be competitive, supplier-distributor pricing policies, and practices that could facilitate collusion.) Phillips noted that the Supreme Court’s decision in NCAA had just applied the Rule of Reason in holding for plaintiffs, so it was hardly a bar to successful prosecution. Of concern to the Republicans was a proposal in Congress that would eliminate the FTC’s competition authority altogether.

Proposals to seek comment on the rescission were voted down on party lines. Competition policy at the FTC will depend on future Commission actions.

Targeting Sectors and Suspects

Finally the FTC identified seven areas in which it would adopt omnibus resolutions authorizing compulsory process – civil investigative demands and subpoenas enforceable in court. The Commission typically authorizes compulsory process when it identifies specific companies or conduct – like a merger or a deceptive practice – warranting intensive and urgent investigation. These resolutions covered broad sectors of the economy and authorized investigations under practices any law the FTC enforces. As explained in its press release, the Commission’s crosshairs are focused on these sectors and individuals:

Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

With these resolutions, the FTC delegated the decision to issue compulsory process to the staff and a single commissioner. In the past, an investigation into a new area could not use compulsory process until the commission voted on the resolution. These omnibus resolutions dispensed with that procedure. Khan hailed the move as cutting “red tape bureaucracy.” Wilson countered that the Commissioners were abrogating their sworn responsibilities of supervision. This last comment reveals the import of the change. If Chopra departs to the Consumer Financial Protection Bureau, which he has been nominated to direct, the Democrats will lose their majority. These resolutions will allow staff to open investigations, demand documents, and conduct depositions without the approval of the Commission. All the staff will need is the approval of a commissioner.

The Future of FTC Enforcement

In short, July 1, 2021 was an extraordinary day in the history of the FTC. It is an unmistakable harbinger of a Commission that is aiming to ramp up enforcement beyond the levels it sought to achieve in the 1970s. None of the supporters of the agenda had answers to the dissenters’ repeated questions: How will the agency overcome the obstacles that stymied its unbridled ambitions in the past? How will it respond to the resistance it will face from Congress, the courts, and the public it is supposed to serve? The public at this meeting, Phillips noted, was scheduled to comment after the Commission had made its decisions, so that their testimony would not be taken into account before the votes.

How far the Commission can take this agenda will be difficult to predict until the inevitable allegations of unauthorized investigations, arbitrary and capricious rules, unpredictable decisions, and deprivations of due process make their way to higher authorities. Safer predictions: We will see the fruits of yesterday’s decisions in the form of CIDs, subpoenas, proposed rules, and new interpretations of a century-old competition statute. Businesses and citizens will face the first engagement. Then Congress and the courts will join the fray. For a preview of potential outcomes, there is no better place to start than the rich literature of FTC history.

#### \*5. Plan tips the balance.

Tara Lachapelle 8/25/21. Bloomberg Opinion columnist covering the business of entertainment and telecommunications, as well as broader deals. She previously wrote an M&A column for Bloomberg News. “Wall Street Is Ready to Put Lina Khan’s FTC to the Test.” https://www.bloomberg.com/opinion/articles/2021-08-25/wall-street-is-ready-to-put-lina-khan-s-ftc-to-the-test

As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC.

These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong.

“To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.”

Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process.

For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years.

In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too.

The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.”

Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) The Justice Department is pursuing its own case against Google. And what was initially seen as a narrow effort to reel in dominant technology companies has since expanded to other industries in light of a sweeping executive order from President Biden. Even more obscure areas such as ocean shipping are facing new scrutiny.

### AT: Impact D

#### Not benign--- Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

## Advantage 1

### Alt Cause

#### Rare Earth Minerals. [EMORY GK = BLUE]

1AC Umbach ’18 [Frank; September 2018; Ph.D. and Research director of the European Centre for Energy and Resource Security; Konrad Adenauer Foundation, “Energy Security in a Digitalised World and its Geostrategic Implications,” p. 15-16]

Rare earth elements (including dysprosium, neodymium, terbium, europium and yttrium) are often considered to be critical components of renewable energy hardware.7 Ironically, rare earth elements are not rare. They are found in many countries, including China, Russia, Australia, the United States, Brazil, India, Malaysia and Thailand. However, two countries—China and Russia—together hold 57% of global reserves, while the largest remaining country, Australia, holds a mere 2.4% of global reserves.8 Furthermore, rare earths are found in dilute concentrations and are often difficult to separate, making mining, production and processing difficult and capital intensive. Today almost all mining, production and processing of rare earths is in China. Rare earths mined elsewhere generally must be exported to China for processing and then re-imported.9 As demand for renewable energy technologies continues to increase, countries may be inclined to hold rare earth elements in reserve for themselves and compete over these resources.

### Grid Resilient

#### The grid is strong now---energy efficiency, new tech, and cycle generation.

Krysti Shallenberger 17, Utility Dive associate editor, 1-5-2017, "Predictions 2017: 8 sector insiders on what's next for power markets and regulation," Utility Dive, http://www.utilitydive.com/news/predictions-2017-8-sector-insiders-on-whats-next-for-power-markets-and-re/433358/

The traditional drivers of infrastructure additions were load growth and connecting distant generation sources to population centers. However, that has changed. Load growth is negligible in many areas. (At PJM we forecast peak load growth of less than half of one percent per year.) At the same time, more efficient technology, specifically energy efficiency and new natural gas combined cycle generation closer to load centers, has changed power flow patterns, which reduces the need for additional large-scale transmission expansion projects. The reduction in larger scale projects has allowed focus to be shifted to resolving aging infrastructure concerns on lower-voltage facilities. More efficient technologies, the capacity performance construct and upgrades to the system have made the grid increasingly robust and resilient. Last summer, for example, was the first time PJM met a peak demand of more than 150,000 megawatts without invoking emergency procedures and while net exporting power.

### Nuke Terror

#### Their trends are backwards.

Christopher J. Fettweis 19. Associate professor of political science at Tulane University. “Pessimism and Nostalgia in the Second Nuclear Age.” *Strategic Studies Quarterly* 13.1

Finally, despite the string of bleak and terrifying projections from a variety of experts, nuclear weapons have remained well beyond the capabilities of the modern apocalyptic terrorist. The great fear of the SNA literature, that scientific knowledge and technology would gradually become more accessible to nonstate actors, has remained only a dream. Nor does there appear to be a great reservoir of fissile material in the world’s various black markets waiting to be weaponized.58 Just because something has not yet occurred does not mean that it cannot or will not occur eventually. However, it is worth noting that the world has not experienced any close calls regarding nuclear terrorism. Forecasting future unique events is a necessarily dicey enterprise, but one way to improve accuracy is to examine events that have already or almost happened. Given the many complexities involved with nuclear weapons, especially for amateurs as any terrorists would almost certainly be, it is not unreasonable to expect a few failures, or near misses, to precede success. While it is possible that we might not know about all the plots disrupted by international law enforcement, keeping the lid on nuclear near misses would presumably be no small task. As of this writing, the public is aware of no serious attempts to construct, steal, or purchase nuclear weapons, much less smuggle and detonate one. “Leakage” does not seem to be a problem, yet.59 The uniformly pessimistic projections about the second nuclear era have not, at least thus far, been borne out by events. Post–Cold War trends have instead been generally moving in directions opposite to these expectations, with fewer nuclear weapons in the hands of the same number of countries and none pursuing more. Why, then, doesnuclear pessimism persist? What are the roots of the current fashionable unwillingness—or even inability—to detect positive patterns in nuclear security?

## Japan DA

### Links---1NR

#### We have two links:

#### 1---Antitrust---it’s applied extraterritorially---regs are territorial.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Sovereign states have historically enjoyed the prerogative of regulating their own markets when their economic and political policies dictate market intervention. Within the United States, for example, states in the first instance regulate their own land uses, local provision of electricity, or local telephone service. By the same token, the United States generally oversees regulated industries within its own borders, while leaving other sovereign nations to govern theirs. To be sure, federal law often regulates transactions between the United States and foreign countries. Further, international treaties provide for regulation of international trade and transportation, the commercialization of some natural resources, the environmental impact of business activities, and other things with significant extraterritorial spillovers. But by and large we leave other sovereigns to regulate their own markets, particularly those falling within the traditional category of regulated industries, such as public utilities and common carriers.

The conventional literature on regulation recognized the optimal regulatory sovereign as the one whose geographic territory encompassed the regulated firm's service area. Of course, state regulation often yields to federal power under the Supremacy Clause of the United States Constitution. However, in these cases extraterritoriality is not at issue because the federal government's territory encompasses everything contained in the individual states. So, for example, interstate components of electric power generation and transport were traditionally regulated by the federal government, while intrastate components, particularly retail delivery, were regulated by the individual states where the retail customers were located.

Over the last two decades regulated industries in both the United States and elsewhere have been deregulated to one degree or another. What "deregulation" generally means is that certain questions about pricing, new firm entry, or the range of services that a firm can offer, or the construction of additional production or transmission facilities, are no longer supervised by a government agency, at least not as closely. The most extreme examples of deregulation are in transportation markets. For example, under comprehensive Civil Aeronautics Board regulation in the 1970s and earlier the price that an airline set, the schedule it flew, whether it could add or remove a route, and even whether it could bundle air travel with such amenities as hotel rooms or rental cars were subject to comprehensive government supervision. Today the Civil Aeronautics Board no longer exists,' and to one degree or another all these decisions are now up to the firm and the market.

One natural consequence of deregulation has been expanded application of the antitrust laws. As agency command and control becomes less pervasive and an increasing number of market decisions are placed within the firm's discretion, antitrust's general market principles become the regulator of last resort. However, this expansion of antitrust has proceeded in fits and starts, and gone much more smoothly in some markets than in others. Interstate air travel, for example, went rather completely from a regime recognizing widespread antitrust immunity under CAB regulation,2 to one in which carriers are treated as ordinary business enterprises subject to fairly complete antitrust control. 3 By contrast, the road in telecommunications has been much bumpier, with the federal courts currently in complete disarray about the proper role that antitrust should play in bringing competition to local telephone service.4

This change from government agency control to antitrust control is beginning to have one consequence that was not foreseen. While regulatory regimes in the United States could be state, federal, or local, they were for the most part quite strictly territorial. For example, residents of Minneapolis might have their retail electricity regulated intraterritorially by the federal government, the State of Minnesota, or perhaps even the city. But it is unlikely that retail electricity in Minneapolis would be regulated by the State of Illinois or the government of Canada.

The antitrust laws do not exercise the same territorial circumspection. Under traditional ideas about regulatory control it would be almost unthinkable that the United States would attempt to apply its law to a Mexican telephone company's rate structure or customer selection policies; under modern conceptions of antitrust law it is not. The global reach of antitrust extends very far. Actions that occur abroad can be condemned under the Sherman Act if they have an intended, substantial and foreseeable effect on United States commerce. 5 Appellate courts have even approved criminal indictments under United States antitrust law for activity that took place entirely abroad.6

#### 2---Anticompetitive---courts interpret it to mean global---regs are particular.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

III. Extraterritoriality and the core concerns of competition policy

The principle that regulation of public utilities or common carriers is strictly territorial is well established in American law. The United States Supreme Court enforced it with a vengeance in the second half of the 19th century. However, the Court also recognized some room for extraterritorial regulation when courts were applying market principles regarded as "universal" in some sense, as opposed to the specific, highly political and often idiosyncratic provisions of a regulatory statute. Within this framework basic competition rules were thought of as natural, global, and more or less self-defining. In pre-Realist parlance, they were said to be recognized rather than created by the courts. By contrast, specific regulatory provisions were strictly local, or "municipal," and their enforcement was limited to the territory of the sovereign that created them. The result of this dichotomy was more expansive jurisdictional assertions when the policy being enforced was thought to protect general market competition rather than merely enforcing the regulatory mandate of a particular sovereign.

### AT: Ev Old

#### . Here’s recent evidence---Japan hates US extraterritorial application.

Thanh Cong Phan 18. PhD Diss. Master of Laws, Nagoya University, 2013. Bachelor of Laws, Hanoi Law University, 2004. “Competition Law and the Possibility of Private Transnational Governance”. https://dspace.library.uvic.ca/bitstream/handle/1828/10033/Thanh\_Phan\_PhD\_2018.pdf?sequence=1&isAllowed=y

In contrast to its willingness to apply the AMA to anticompetitive conduct abroad, the Japanese government does not recognize the exercise of foreign competition law in Japan. On 18 November 1996 in United States of America v. Nippon Paper Industries Co., the government of Japan filed a brief in the U.S. Court of Appeal for the First Circuit in which it asserted that, following principles of international law, “anticompetitive activities occurring within Japanese territory by Japanese corporations fall primarily under the scope of Japanese jurisdiction and are regulated by Japanese legislation.”280 The Japanese government continued that the application American antitrust laws to such activities would be invalid “in the absence of a substantial link between the activities and the source of jurisdiction.”281 The Japanese government also argued that “[o]ne nation’s unilateral adjudication or extraterritorial application of its national laws is not, however, an appropriate means of resolving international differences.”282 The government of Japan urged the court to hold that U.S. courts should not exercise American jurisdiction over business activities conducted in Japan by Japanese companies.283

The government of Japan made the same argument in 2004 in F. Hoffman-La Roche v. Empagran S.A.284 In that case, the Japanese government submitted an amicus curiae brief in support of petitioners to the Court of Appeal for the District of Columbia Circuit.285 The Japanese government argued that the FTAIA sought to clarify the limits of U.S. antitrust jurisdiction in U.S. foreign commerce, not expand that jurisdiction.286 The brief cited the statement of the U.S. Congress that “[t]he clarified reach of our own laws could encourage our trading partners to take more effective steps to protect competition in their markets under their competition laws.”287 The government of Japan asserted that nothing in the FTAIA’s legislative history suggests that it was intended to expand American antitrust jurisdiction to foreign firms in foreign markets and if the legislature had intended such an expansion, “there would have been a storm of criticism by foreign governments.”288

In sum, Japan’s approach to the extraterritorial application of competition law is inconsistent. On the one hand, the JFTC has applied the AMA extraterritorially, apparently based on an effects doctrine, but it fails to provide a clear limit on the AMA’s extraterritorial jurisdiction. On the other hand, the Japanese government strongly opposes the extraterritorial application of foreign competition law to transactions conducted by Japanese corporations in Japan. These conflicting views suggest that Japan has a double standard when it comes to the extraterritorial application of competition law.

#### 3. Narrowly defined core antitrust is uncontroversial---only the plan’s expansion offends allies.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

V. Conclusion

Within competition policy worldwide, a great deal of consensus exists about such practices as price fixing and other naked agreements in markets that we generally consider to be competitive, or unregulated. In the presence of that consensus, using national court systems to reach activities outside national boundaries is increasingly uncontroversial, unlikely to cause a great deal of harm, and often does much good. Indeed, importing nations typically have a greater incentive than exporting nations to apply their law to cartel agreements causing monopoly prices. The same thing can be said of a very small number of unilateral practices, such as improper intellectual property (IP) infringement actions or other abuses of IP rights, particularly when there is international consensus about the scope of these rights.

But when one moves away from these core concerns of competition policy, consensus breaks down to a very significant extent. A unique combination of antitrust jurisdictional doctrines then operate so as to impose the highly general United States antitrust statutes on foreign regulators-a task clearly beyond anyone's vision of antitrust's appropriate mandate. The broad view of extraterritorial jurisdiction and the narrow conception of comity developed in the Hartford Fire decision72 become affirmatively offensive to foreign regulatory prerogatives when the antitrust laws are applied beyond their traditional "core" concerns, and in ways that make the United States court little more than a substitute for the regulatory agency and for a foreign regulatory agency at that.

#### 4. Current law is inoffensive---labeling new businesses practices anticompetitive is seen as adventurist.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Such assertions of extraterritorial power may be relatively inoffensive when the complaint challenges naked price fixing or some other practice widely acknowledged by every competition law authority in the world as anticompetitive. But antitrust in newly deregulated industries has given rise to many more adventuresome antitrust claims about which there is significantly less consensus, even within the United States. A principal one of these is antitrust's essential facility doctrine, which requires a dominant firm to share a facility that is "essential" in the sense that rivals cannot prosper in the market without access to it.50 For example, under the essential facility doctrine a telephone company might be required to share its wire loop or other essential network elements with smaller long-distance or local carriers that want to deliver services in the market as well, but can do so only if they can interconnect. 51

### AT: Uniqueness

#### 2. Don’t run on autopilot---frictions prevent effectiveness of the alliance.

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There is not cause for concern about Japan abandoning the alliance with the United States. Abe came back to power promising a stronger U.S.-Japan alliance and has given no indication that he is abandoning that promise. Nor are any of the major political figures trying to replace him challenging the alliance relationship. Moreover, the growing threat from China means that Washington and Tokyo need each other more than ever. But the growing points of friction and uncertainty in the relationship carry negative consequences, particularly given that even though polls show that the Japanese public supports the alliance, they also reveal that trust in the United States and President Trump has dropped precipitously. And it sends the wrong message to Tokyo that the next U.S. envoy is cooling his heels waiting for confirmation.

The concern is not that Japan somehow defects, but that Tokyo and Washington could let growing irritation and uncertainty distract them from the increased work that must be done to preserve a truly free and open Indo-Pacific. The White House website and the campaign website of presumptive Democratic presidential nominee Joe Biden both speak to the importance of the U.S.-Japan alliance. That is a very good thing, but alliances do not run on auto pilot. They take work. Lest the allies are prepared to let the current troublesome trends continue, more attention should be paid to what has otherwise been a reliably solid relationship.

#### 3. The alliance is not locked-in---an exogenous shock could tip Japan toward rearm

Dr. Adam Liff 19. Assistant Professor of East Asian International Relations at the Hamilton Lugar School of Global and International Studies at Indiana University, Ph.D. and M.A. in Politics from Princeton University, and B.A. from Stanford University, “Unambivalent Alignment: Japan’s China Strategy, The US Alliance, and the ‘Hedging’ Fallacy”, International Relations of the Asia-Pacific, July 2019, p. 31

Nevertheless, **what is at present is not necessarily what shall forever be**. Japan’s leaders will continue to face a complex, dynamic, and potentially volatile strategic environment. Increasingly **difficult trade-offs** may **manifest**, especially if China’s military power, economic wherewithal, and willingness to attempt to drive wedges between the United States and its allies grow. An **exogenous shock** could also upset Japan’s basic trajectory. Indeed, this possibility appears **less remote** today given China’s and North Korea’s recent policies, geopolitical and **geo-economic shifts**, **US** relative decline, and President **Trump's skepticism** of alliances and free trade. Yet, even in this case, Japan’s continued pursuit of more **independent military capabilities** and strategic autonomy while simultaneously bolstering security cooperation with the United States and its regional partners seems more likely than a strategic realignment toward Beijing.

### AT: Turn

#### 2. They don’t solve---supply chain disruptions are priced in---only antitrust can disrupt the alliance.

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Japan has been delighted with the first months of Joe Biden’s presidency. Unlike his predecessor, whose transactional view of diplomacy rankled many in Tokyo, Biden has been at pains to rekindle the U.S.-Japanese alliance and to emphasize that Japan remains the linchpin of U.S. security policy in Asia. In February, the two nations renewed the agreement under which Japan hosts U.S. troops, and in March, Secretary of State Antony Blinken and Secretary of Defense Lloyd Austin both visited Japan on their first overseas trips. Biden hosted Japanese Prime Minister Suga Yoshihide as his first foreign guest as president.

It will surprise no one that a major focus of these early meetings has been China, whose economic and military rise has unnerved Washington and Tokyo and united them in competition with Beijing. Biden administration officials have repeatedly affirmed their readiness to defend Japan, including its claim to the disputed Senkaku Islands (known in China as the Diaoyu Islands). But in addition to military and diplomatic competition with China, which has long been central to the U.S.-Japanese relationship, both countries have placed a new and important emphasis on economic security. In their first meeting, Biden and Suga discussed ways to protect critical supply chains, intellectual property rights, and sensitive technology that should not pass into Beijing’s hands. At the March meeting of the Quadrilateral Security Dialogue, an informal strategic forum that includes Australia, India, Japan, and the United States, both leaders took a similarly expansive view of the China challenge, leading to the creation of working groups on controlling critical and emerging technologies, among other economic security issues.

That heightened economic competition with China has helped Japan reinvigorate its alliance with the United States is not an accident. Over the last several years, the Japanese government—first under Prime Minister Abe Shinzo and then under Suga—has honed a new brand of economic statecraft designed to protect the country’s economic interests, limit China’s creeping influence in Asia, and bolster Japanese soft power. Through a combination of enhanced economic intelligence, tighter trade restrictions, and better stewardship of data and emerging technologies, Japan has become a force for economic security in Asia and reinforced its position as an indispensable U.S. ally.

ABE’S ECONOMIC STATECRAFT

Japan has long thought of security in more than military terms. In part because of the military constraints imposed by its pacifist constitution, Tokyo has historically tried to win the trust of other Asian powers through aid, trade, and diplomacy. And it has largely succeeded: public opinion surveys in Southeast Asia consistently show that Japan is the most trusted major power in the region and that it has considerable soft power.

### Impact

#### 2. There’s a risk of Indo-Pak war---it goes nuclear---kills billions.

Zachary Keck 17. Wohlstetter Public Affairs Fellow at Nonproliferation Policy Education Center, George Mason University. “Billions Could Die If India and Pakistan Start a Nuclear War.” The National Interest. July 21. <http://nationalinterest.org/blog/the-buzz/billions-could-die-if-india-pakistan-start-nuclear-war-21623?page=2>

Billions Could Die If India and Pakistan Start a Nuclear War

With the world’s attention firmly fixated on North Korea, the greatest possibility of nuclear war is in fact on the other side of Asia.

That place is what could be called the nuclear triangle of Pakistan, India and China. Although Chinese and Indian forces are currently engaged in a standoff, traditionally the most dangerous flashpoint along the triangle has been the Indo-Pakistani border. The two countries fought three major wars before acquiring nuclear weapons, and one minor one afterwards. And this doesn’t even include the countless other armed skirmishes and other incidents that are a regular occurrence.

At the heart of this conflict, of course, is the territorial dispute over the northern Indian state of Jammu and Kashmir, the latter part of which Pakistan lays claim to. Also key to the nuclear dimension of the conflict is the fact that India’s conventional capabilities are vastly superior to Pakistan’s. Consequently, Islamabad has adopted a nuclear doctrine of using tactical nuclear weapons against Indian forces to offset the latter’s conventional superiority.

If this situation sounds similar, that is because this is the same strategy the U.S.-led NATO forces adopted against the Soviet Union during the Cold War. In the face of a numerically superior Soviet military, the United States, starting with the Eisenhower administration, turned to nuclear weapons to defend Western Europe from a Soviet attack. Although nearly every U.S. president, as well as countless European leaders, were uncomfortable with this escalatory strategy, they were unable to escape the military realities undergirding it until at least the Reagan administration.

At an event at the Stimson Center in Washington this week, Feroz Khan, a former brigadier in the Pakistan Army and author of one of the best books on the country’s nuclear program, said that Pakistani military leaders explicitly based their nuclear doctrine on NATO’s Cold War strategy. But as Vipin Narang, a newly tenured MIT professor who was on the same panel, pointed out, an important difference between NATO and Pakistan’s strategies is that the latter has used its nuclear shield as a cover to support countless terrorist attacks inside India. Among the most audacious were the 2001 attacks on India’s parliament and the 2008 siege of Mumbai, which killed over 150 people. Had such an attack occurred in the United States, Narang said, America would have ended a nation-state.

The reason why India didn’t respond to force, according to Narang, is that—despite its alleged Cold Start doctrine—Indian leaders were unsure exactly where Pakistan’s nuclear threshold stood. That is, even if Indian leaders believed they were launching a limited attack, they couldn’t be sure that Pakistani leaders wouldn’t view it as expansive enough to justify using nuclear weapons. This is no accident: as Khan said, Pakistani leaders intentionally leave their nuclear threshold ambiguous. Nonetheless, there is no guarantee that India’s restraint will continue in the future. Indeed, as Michael Krepon quipped, “Miscalculation is South Asia’s middle name.”

Much of the panel’s discussion was focused on technological changes that might exacerbate this already-combustible situation. Narang took the lead in describing how India was acquiring the capabilities to pursue counterforce strikes

(i.e., take out Pakistan’s nuclear arsenal in a preventive or more likely preemptive strike). These included advances in information, surveillance and reconnaissance capabilities to be able to track and target Islamabad’s strategic forces, as well as a missile-defense system that could take care of any missiles the first strike didn’t destroy. He also noted that India is pursuing a number of missile capabilities highly suited for counterforce missions, such as Multiple Independently Targetable Reentry Vehicles (MIRVs), Maneuverable Reentry Vehicles (MARVs) and the highly accurate BrahMos missiles that Dehli developed jointly with Russia. “BrahMos is one hell of a counterforce weapon,” even without nuclear warheads, Narang contended.

As Narang himself admitted, there’s little reason to believe that India is abandoning its no-first-use nuclear doctrine in favor of a first-strike one. Still, keeping in mind Krepon’s point about miscalculation, that doesn’t mean that these technological changes don’t increase the potential for a nuclear war. It is not hard to imagine a scenario where the two sides stumble into a nuclear war that neither side wants. Perhaps the most plausible scenario would start with a Mumbai-style attack that Indian leaders decide they must respond to. In hopes of keeping the conflict limited to conventional weapons, Delhi might authorize limited punitive raids inside Pakistan, perhaps targeting some of the terrorist camps near the border. These attacks might be misinterpreted by Pakistani leaders, or else unintentionally cross Islamabad’s nuclear thresholds. In an attempt to deescalate by escalating, or else to halt what they believe is an Indian invasion, Pakistani leaders could use tactical nuclear weapons against the Indian troops inside Pakistan.

With nuclear weapons introduced, Delhi’s no-first-use doctrine no longer applies. Indian leaders, knowing they’d face incredible domestic pressure to respond, would also have no guarantee that Pakistani leaders didn’t intend to follow the tactical use of nuclear weapons with strategic strikes against Indian cities. Armed with what they believe is reasonable intelligence about the locations of Pakistan’s strategic forces, highly accurate missiles and MIRVs to target them, and a missile defense that has a shot at cleaning up any Pakistani missiles that survived the first strike, Indian leaders might be tempted to launch a counterforce first strike. As former Indian National Security Advisor Shivshankar Menon wrote in his memoirs (which Narang first drew people’s attention to at the Carnegie Nuclear Policy Conference in March): “India would hardly risk giving Pakistan the chance to carry out a massive nuclear strike after the Indian response to Pakistan using tactical nuclear weapons. In other words, Pakistani tactical nuclear weapon use would effectively free India to undertake a comprehensive first strike against Pakistan.”