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### 1NC – OFF

#### Next off is the regulations cp.

#### The United States federal government should [ ] through non-antitrust regulations.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

### 1NC – OFF

#### Next off is the states cp.

#### The fifty states and all relevant territories should \_\_\_

#### 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.

### 1NC – OFF

#### Next off is the rule making counterplan.

#### Text: 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

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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.

### 1NC – OFF

#### Next off is the cap k.

#### Anti-trust is a capitalist psy op to pacify the working class, buy time to mystify unsustainable accumulation, and map competition onto subjectivity – homo economicus devalues life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie Allinson is 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”

Rose 21 [Nick. 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

### 1NC – OFF

#### Next off is the FTC DA.

#### First off is the FTC DA

**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, suffering, and extinction**

**Thomas 20** – Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn

Mike Thomas, 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.”

### 1NC – OFF

#### Next off is the Politics DA.

#### Infrastructure will pass now but can be derailed

Laura Tyson & Lenny Mendonca 9-14-2021, Laura Tyson, former chair of the US president's Council of Economic Advisers, is professor of the Graduate School at the Haas School of Business and chair of the Blum Centre Board of Trustees at the University of California, Berkeley. Lenny Mendonca, senior partner emeritus at McKinsey & Company, is a former chief economic and business adviser to Governor Gavin Newsom of California and chair of the California High-Speed Rail Authority "Why America must go big on infrastructure," Jordan Times, https://www.jordantimes.com/opinion/project-syndicate/why-america-must-go-big-infrastructure

Economists across the political spectrum have long advocated an increase in infrastructure investment in the United States. Now, Congress is debating infrastructure spending packages that would secure the current economic recovery and boost potential growth over the next decade.

Despite deep partisan divisions on most other issues, the Senate recently passed the $1 trillion Infrastructure Investment and Jobs Act (IIJA) by a large majority. The bill now must pass the House of Representatives, where Speaker Nancy Pelosi has secured an agreement for a vote by the end of September. Approval looks likely but is by no means certain, given complete lack of support from House Republicans and ongoing divisions among House Democrats.

#### Antitrust reform requires PC and trades off with other legislative priorities.

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Infrastructure’s key to ag production, connectivity, and global food security

Jahn 19 — Chris; contributor and president of The Fertilizer Institute. (“America is in desperate need of infrastructure investment: Senate highway bill a step in the right direction” The Hill. August 7, 2019. <https://thehill.com/blogs/congress-blog/politics/456602-america-is-in-desperate-need-of-infrastructure-investment-senate)>

It’s no secret that our country’s infrastructure is in desperate need of investment after years of neglect. We’ve all groaned and said some choice words when hitting deep potholes or been late to an appointment due to road or bridge closures. As our network of roads and bridges have continued to crumble, the situation has degraded from an occasional personal inconvenience to a serious barrier to national economic growth and prosperity. The infrastructure network we depend upon to move people and commercial goods has long outlived its designed lifespan and is operating on borrowed time. For agriculture, recent flooding in the Midwest highlights how vulnerable our network is, the extensive nature of disrepair and how quickly critical food supply chains can be severed. These disruptions are not just headaches for the fertilizer and farming industries; they can potentially lead to higher prices on everyday goods for all consumers. Last week Sens. [John Barrasso](https://thehill.com/people/john-barrasso) (R-Wyo.), [Tom Carper](https://thehill.com/people/tom-carper) (D-Del.), [Shelley Moore Capito](https://thehill.com/people/shelley-moore-capito) (R-W.Va.) and [Ben Cardin](https://thehill.com/people/benjamin-cardin) (D-Md.) demonstrated much needed leadership by introducing [“America’s Transportation Infrastructure Act of 2019,”](https://www.epw.senate.gov/public/index.cfm/2019/7/epw-committee-leaders-introduce-most-substantial-highway-legislation-in-history) legislation that would provide $287 billion over five years to maintain and repair our crumbling roads and bridges. The funding level authorized in the bill is a nearly 30 percent increase over current levels and will be a much-needed economic shot in the arm for all communities and local economies across the country. Our country’s roads and bridges have always played a critical role in getting plant nutrients to farmers’ fields when they are needed. But with [railroad rate increases](https://www.theregreview.org/2019/06/24/moore-us-freight-customers-taxed-higher-rail-rates/), rail service challenges and stalled reform efforts due to oversight board vacancies, roadway infrastructure is more important now than ever. Unfortunately, the state of our road system is hurting our industry’s ability to deliver fertilizer to customers. Last year we had truck drivers waiting in line for up to 11 hours to pick up fertilizer due to bottlenecks and breakdowns in road networks. This year we saw heavy rains wash away deteriorating roads and bridges that should have long ago been repaired and upgraded to standards that keep our economy growing and our communities connected. The Senate proposal would provide $6 billion over five years to address the backlog of bridges in poor condition nationwide and alleviate and prevent future network delays. The importance of the timeliness of fertilizer deliveries cannot be overstated. The safe and reliable delivery of fertilizer to ensure that nutrients can be applied at just the right time in the growing process is absolutely essential to both keeping crop yields high enough to sate global demand and protecting the environment. The Fertilizer Institute (TFI) has for years been tirelessly promoting 4R Nutrient Stewardship, a collection of best management practices which include using the Right fertilizer source, at the Right rate, at the Right time and in the Right place. The 4Rs have been identified by multiple conservation and environmental stakeholders as one of the most impactful pathways to keep fertilizer on fields where it belongs and out of waterways where it doesn’t. A key part of that formula is getting it there at the Right time and a reliable infrastructure network is necessary to make that happen. In addition to providing needed investment in roads and bridges, the Senate legislation supports increased research for carbon capture and storage projects. Thanks to years of investment, nitrogen fertilizer production efficiency has essentially reached its technical efficiency limit due to the laws of chemistry. Carbon capture and recycling is and will continue to be a strategy to reduce emissions from the nitrogen fertilizer production process. In 2016, our industry captured 8 million metric tons of carbon dioxide, the equivalent of removing 1.7 million cars from the road for a year. Additional investments in research and development in this area will help continue to reduce emissions by making the technology more feasible, efficient and scalable for future use. At the end of the day, the fertilizer industry relies heavily on the timely delivery of product to growers where and when they need it so they can grow the food, fuel and fiber to feed a growing world. Our country’s farmers are the best and most productive in the world and the United States is the globe’s top agricultural exporter. A robust and well-maintained infrastructure network to facilitate the movement of critical inputs is necessary to ensure that doesn’t change. “America’s Transportation Infrastructure Act” will help ensure U.S. agriculture has a 21st century transportation network that allows it to thrive and grow in a competitive global marketplace.

#### US ag and food security stabilize the globe—collapse greenlights *great power wars*

Castellaw 17—Lieutenant General, former President of the non-profit Crockett Policy Institute (John, “Opinion: Food Security Strategy Is Essential to Our National Security,” <https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security>)

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

## Case

### 1NC – Turn

#### Hegemony causes great-power war – guarantees backlash by less powerful states.

Mazzar 17 — Michael Mazzar, Senior Political Scientist at the RAND Corporation, Ph.D. in Public Policy from the University of Maryland, M.A. in Security Studies from Georgetown University, B.A. in Government from Georgetown University, 2017 (“The Once and Future Order,” *Foreign Affairs,* January/February, Accessible Online at <https://www.foreignaffairs.com/articles/2016-12-12/once-and-future-order>, Accessed On 11-03-2017)

MIX IT UP

International orders tend to rest on two pillars: the balance of power and prestige among the leading members and some degree of shared values. Both of these pillars look shaky today. For many years, U.S. grand strategy has been based on the idea that the unitary U.S.-led order reflected universal values, was easy to join, and exercised a gravitational pull on other countries. Those assumptions do not hold as strongly as they once did. If Washington hopes to sustain an international system that can help avoid conflict, raise prosperity, and promote liberal values, it will have to embrace a more diverse order—one that operates in different ways for different countries and regions and on different issues.

The United States will be tempted to resist such a change and to double down on the existing liberal order by following the Cold War playbook: rallying democracies and punishing norm breakers. But such a narrow order would create more embittered outcasts and thus imperil the most fundamental objective of any global order: keeping the peace among great powers. Dividing the world into defenders and opponents of a shared order is also likely to be less feasible than in the past. China’s role in the global economy and its standing as a regional power mean that it cannot be isolated in the way the Soviet Union was. Many of today’s rising powers, moreover, have preferences that are too diverse to gather into either a U.S.-led system or a bloc opposed to it.

### AT: Russia War

**Russia won’t escalate – MAD & hyperbole**

**Shepp 18** – Writer & Editor for NY Mag and RCP [Jonah Shepp, Are Putin’s New Nukes a Real Threat?, MAR. 4 18, <http://nymag.com/daily/intelligencer/2018/03/are-putins-new-nukes-a-real-threat.html>]

As terrifying as the thought of nuclear-armed drones and “invincible” nuclear missiles may be, these revelations don’t actually change the balance of power between Russia and the U.S. in any meaningful way. For one thing, the Pentagon was already aware that Russia was developing some of these technologies, as indicated in the nuclear posture review ordered by President Donald Trump last year and published in January. The supposed threat posed by Russia’s military innovations are part of the justification for the new sea-based nukes the Trump administration wants to develop, as well as Trump’s stated desire to spend $1.2 trillion modernizing and expanding the U.S. nuclear arsenal. The key bit of context to keep in mind here is that the U.S. and Russia both possess enough atomic firepower that a nuclear exchange between them **would wipe both** countries **off the map** and basically cause the collapse of human civilization as we know it. If Putin wanted to nuke Florida — as in an animation he showed during his address that State Department spokeswoman Heather Nauert described as “cheesy” — he already had the means to do so. His new gadgets don’t really make any difference in that regard. The ability to elude U.S. and NATO defenses also sounds like a scarier feature than it really is, because these defenses are incredibly easy to elude. Ballistic missile defense systems perform spottily even under ideal test conditions and provide more the illusion of safety than safety itself. Even if a THAAD battery can knock down one or two incoming ballistic missiles, stopping dozens of them is a much taller order that current antiballistic missile technology can’t handle. **That’s why the cornerstone of the U.S.’s nuclear defense strategy remains the promise of massive retaliation** in the event of an attack. In any case, a direct hit on Mar-a-Lago isn’t the kind of Russian nuclear mischief the administration is worried about. Putin stressed on Thursday that these new nuclear deployment systems were designed with defensive purposes in mind and that Russia would never launch a nuclear first strike. He’s probably not lying about that. For all his megalomaniacal tendencies, Putin surely has the presence of mind to understand that starting a **nuc**lear war, particularly against the U.S., is guaranteed to end catastrophically and that his billions of dollars won’t be worth much in the post-apocalypse. Rather, what the Trump administration fears is a supposed Russian doctrine known as “escalate to de-escalate,” wherein Moscow would either threaten or actually carry out a low-yield nuclear strike as part of a conventional conflict in its own backyard, betting that NATO would decide that avenging the loss of, say, Tallinn wasn’t worth ending the world after all. **This doctrine appears nowhere,** however, **in Russia’s published military strategy**, in its large-scale military exercises, or in public statements from its officials, leading arms control experts like Bruno Tertrais and Michael Krepon **to doubt that it really exists outside the fever dreams of American hawks and Russian neo-fascist revisionists.** **The notion of Russia crossing the nuclear threshold with the hope of de-escalating a conventional conflict is probably as absurd as it sounds**.

### AT: Cyber

**Threat of retaliation checks cyber attacks---AND, terrorists lack the capabilities.**

Jon Lindsay & Erik Gartzke 16. \*\*Assistant Professor of Digital Media and Global Affairs at the University of Toronto. \*\*Associate Professor at UC San Diego. “Coercion through Cyberspace: The Stability-Instability Paradox Revisited” in K. M. Greenhill & J. P. Krause eds. *The Power to Hurt: Coercion in Theory and in Practice*. Oxford University Press. Forthcoming.

Widespread belief that offense is easier than defense in cyberspace, that stronger states are increasingly vulnerable while weaker actors are increasingly empowered, and that the anonymity of cyber operations precludes effective deterrence leads many to argue that cyberspace brims with unprecedented, even revolutionary dangers. 2 Yet national security officials, defense firms, media pundits, and a burgeoning private cybersecurity industry all have **incentives to exaggerate the threat**, while the extreme secrecy of cyber operations complicates sober assessment.3 Critics of the cyber revolution argue that most actors **lack the capacity** to overcome **significant barriers** to weaponization in cyberspace, while those that have the capacity **lack the motivation** to use it, choosing instead to explore digital variations on traditional espionage and covert action.4 Nevertheless, even if breathless scenarios of a “digital Pearl Harbor” or “cyber 9/11” are **overblown**, cyberspace poses real challenges for international relations in theory and practice. As Austin Long argues in chapter 2, intelligence and coercion are increasingly linked, and cyberspace is increasingly valuable for intelligence. Recent events demonstrate that strategic actors are willing to use cyber operations as a tool of statecraft, even as the strategic results have proved ambiguous at best: Russian denial of service attacks and information operations in Estonia, Georgia, and Ukraine; relentless Chinese espionage campaigns and intrusive internet censorship; U.S.-Israeli sabotage of Iranian nuclear enrichment infrastructure; Iranian retaliation against Saudi Aramco and American banks; American cooptation of major internet firms for global signals intelligence collection revealed by Edward Snowden; criminal breeches of leading firms and government agencies exposing the private data of millions of citizens and government employees; North Korean harassment of Sony in Hollywood to protest a satirical movie; Russian attempts to influence the 2016 U.S. presidential election, and the list goes on.¶ To paraphrase Clausewitz, cyberwar is politics by other means. Understanding the dynamics, magnitude, and likelihood of aggression online requires an assessment of the operational requirements for staging various types of cyber operations, the strategic benefits actors hope to gain through them, and the risks of unintended consequences. In this chapter we lay out a typology of cyber operations that combines the logic of technological possibility with the logic of strategic utility. We distinguish a number of myths that assume cyber attacks can provide high rewards at low cost from more realistic options that deliver variable rewards at variable costs. There is no free lunch in cyberspace. As a result of technical and political constraints on secret operations that depend on interconnections between adversaries, the coercive potential of cyberspace is more limited than generally appreciated. Because **voluntary connections** to the internet make cyber harms possible in the first place, aggressors must be careful not to provoke their victims to disconnect. The **social** and **economic value** of the internet both expands and **constrains the scope** for minor aggression like espionage, covert influence, and symbolic protest. Moreover, the availability of military instruments beyond the cyber domain creates potential for retaliation for unacceptable harms. There are **diminishing incentives** to “go big” with cyber warfare, **even** as an adjunct to battlefield **op**eration**s**, because victims have incentives to **mount major investigations** and **shift domains** to **punish cyber aggression**. Coercion still has an important role in cyberspace, nonetheless, especially when exploited in conjunction with other forms power such as military force. We thus delineate the ways in which the cyber domain can be used alone or in conjunction with other domains for **deterrence** or compellence.¶ Strategic logic helps to explain the highly skewed distribution of cyber harms we observe historically. While information technology creates the possibility for harm, it is political and economic incentives that determine the probability of harm. Small-scale aggression online and computer crime is relatively appealing and thus more abundant; large-scale cyber attacks are more difficult and less desirable for initiators and thus far less likely to occur. This argument extends the logic of the **“stability-instability paradox”** pioneered in the 1960s. Mutually assured destruction may have restrained the superpowers from engaging in direct confrontations during the Cold War, but nuclear threats could not credibly prevent the exercise of proxy wars throughout the Third World. The mechanisms of restraint in the cyber domain are slightly different than in the nuclear world insofar as actors look to maintain connectivity and avoid military retaliation vs. mutual Armageddon, but the results are similar: we see little to none of the most dangerous behavior but a great deal of provocative friction. It turns out that cyber revolutionaries and cyber skeptics are both partially correct. We should expect to see a lot more creative exploitation of global information infrastructure, but threat actors have **strong incentives** to **restrain** the intensity of their exploitation.

### AT: Cyber---Grid

#### The grid is resilient to cyber-attacks and states have no motive.

Jesse Dunietz and Robert M. Lee 17. \*\*Scientific American's 2017 AAAS Mass Media fellow, and a Ph.D. candidate in computer science at Carnegie Mellon University. \*\*CEO of industrial cybersecurity firm Dragos. “Is the Power Grid Getting More Vulnerable to Cyber Attacks?” Scientific American. <https://www.scientificamerican.com/article/is-the-power-grid-getting-more-vulnerable-to-cyber-attacks/>

Two weeks ago it was cyberattacks on the Irish power grid. Last month it was a digital assault on U.S. energy companies, including a nuclear power plant. Back in December a Russian hack of a Vermont utility was all over the news. From the media buzz, one might conclude that power grid infrastructure is teetering on the brink of a hacker-induced meltdown. The real story is more nuanced, however. Scientific American spoke with grid cybersecurity expert Robert M. Lee, CEO of industrial cybersecurity firm Dragos, Inc., to sort out fact from hype. Dragos, which aims to protect critical infrastructure from cyberattacks, recently raised $10 million from investors to further its mission. Before he founded the company, Lee worked for the U.S. government analyzing and defending against cyberattacks on infrastructure. For a portion of his military career, he also worked on the government’s offensive front. His work has given him a front-row view on both sides of infrastructure cybersecurity. [An edited transcript of the interview follows.] How concerned should we be about grid and infrastructure cybersecurity, and what should we be most worried about? The electric grid and most infrastructure we have is actually fairly well built for reliability and safety. We’ve had a strong safety culture in industrial engineering for decades. That safety and reliability has never been thought of from a cybersecurity perspective, but it has afforded us a very defensible environment. As an example: if a portion of the U.S. power grid goes down. We usually anticipate those things for hurricanes or winter-weather storms. And we’re good at moving away from the computers and doing manual operations, just working the infrastructure to get it back. Usually it’s hours, maybe days; never more than a week or so. A lot of these cyberattacks deal with the computer technology and the interconnected nature of the infrastructure. And so when they target it in that way, you’re talking hours, maybe a day, at most a week of disruption. For reasonable scenarios, we’re not talking about a long time of outages, and we’re not talking about compromising safety. Now, the scary side of it is [twofold]. One, our adversaries are getting much more aggressive. They’re learning a lot about our industrial systems, not just from a computer technology standpoint but from an industrial engineering standpoint, thinking about how to disrupt or maybe even destroy equipment. That’s where you start reaching some particularly alarming scenarios. The second thing is, a lot of that ability to return to manual operation, the rugged nature of our infrastructure—a lot of that’s changing. Because of business reasons, because of lack of people to man the jobs, we’re starting to see more and more computer-based systems. We’re starting to see more common operating platforms. And this facilitates a scale for adversaries that they couldn’t previously get. When you say our adversaries are getting more aggressive, what are you referring to? The key events are things like the Ukraine attack in 2015–2016, [in which a cyberattack brought down portions of the Ukrainian power grid], as well as two different campaigns in 2013–2014, BlackEnergy2 and Havex, [two malware programs that were deployed against energy sector companies]. Basically, far-reaching espionage on industrial facilities one year; the next year getting into industrial environments; and then culmination in attacks in 2015–2016. That’s aggressive in itself. For my own firm, what we’re seeing in the [overall] activity in the space is it’s growing. Over the last decade, I have seen adversary activity increase in some measure, and then around 2013–2014 just start spiking. What are the adversaries actually doing in these attacks? [There are two broad categories of attacks.] Stage I intrusions are those designed to gain information. These are the traditional espionage efforts we’ve become accustomed to hearing about, where information is stolen or deleted. A Stage II attack could result in temporary loss of power, physical damage to equipment, or other types of scenarios we often hear about. It is important to note these are not trivial to accomplish. If an attacker wants to progress to a Stage II attack, during the Stage I intrusion they have to steal information specific to [that] industrial environment. The 2013–2014 campaigns that I mentioned were exactly the kinds of Stage I activity that you’d want to use to pivot into a Stage II activity. And so they scared the heck out of all of us. But the stuff we’ve heard about recently—the nuclear site and about a dozen energy companies that were compromised in a phishing campaign that made the news—none of that sounded tailored toward pivoting into a Stage II. Once an adversary has broken into the “business networks” used for email, documents and so on, how far a jump is it for them to access the industrial control system (ICS) networks used to control and monitor the industrial equipment? In nuclear environments, [business networks and control networks are] airgapped—[i.e., computers on one network cannot talk to those on the other]—because of safety regulations. The idea that because you got into the business network you can easily move into the ICS network is ridiculous. That is not true with other industrial infrastructures—electric energy, oil and gas, manufacturing, etc. You absolutely have [ICS] networks that are connected up. The nuance here is that we have a joke in the community: you’ll get security folks who don’t know much about ICS coming in with penetration testers and saying, “Oh my gosh, I found so many vulnerabilities!” And so the joke is, why don’t I just sit you down at the terminal? I will give you 100 percent access. Now make the lights blink. There’s a big gap there. [So the challenge is] not so much getting access. It’s once you get access, do you know what to do in a way that’s not just going to be embarrassing? What motivation do these adversaries have to attack the U.S. grid? I do not feel that there is a legitimate reason for adversaries to disrupt or destroy industrial infrastructure outside of a conflict scenario. Ukraine and Russia is a great example. I don’t necessarily mean declared war, but in places where we see conflict, I think we’ll see industrial attacks: North Korea-South Korea, China-Taiwan. But there are some scenarios that concern me, where we might have our hands forced and not have clarity around what happened. I’m aware of at least one case where a skilled adversary broke into an industrial environment, and in the course of intelligence operations they accidentally knocked over some sensitive system that led to visible destruction and almost to multiple casualties. And the worst part is, we didn’t actually realize it was a failed operation until about a month after, because the forensics and analysis take time. So you could have a scenario where the U.S., Russia, China, Iran—big players—are doing intelligence operations on each other, are doing pre-positioning to have deterrence or political leverage, and mess up that operation in a way that looks like an attack that we do not have transparency on for some time. We do not have international norms around how to handle that. Outside of conflict scenarios, though, I don’t see the advantage to [deliberate] disruptive or destructive attacks. I think we haven’t seen it not because they haven’t wanted to, but because the return on investment is minimal. What’s really advantageous is sitting U.S. congressmen and policymakers fearing what can happen with industrial infrastructure. That fear drives policy far more than actually turning the lights off and having them realize [they will] come back on in six hours.

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### CP

#### Participation must be prior and considered---its key to legitimacy of rules and participation.

Rohit Chopra and Lina Khan 20. Rohit Chopra, Commissioner, Federal Trade Commission. And Lina M. Khan, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; former Legal Fellow, Federal Trade Commission. “The Case for "Unfair Methods of Competition" Rulemaking”. The University of Chicago Law Review , Vol. 87, No. 2 (March 2020), pp. 357-380. https://www.jstor.org/stable/10.2307/26892415

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

#### Perms sever the mandate of the plan---counterplan doesn’t fiat antitrust law but recommends a rule---process could result in no change---makes the affirmative conditional and a moving target.

[IF NOT READ YET]

Justia 21. "Notice and Comment Process for Agency Rulemaking". Updated: May 2021. Accessed: 8/26/2021. https://www.justia.com/administrative-law/rulemaking-writing-agency-regulations/notice-and-comment/

Agencies must consider all “relevant matter presented” during the comment period, and they must respond in some form to all comments received. They are not, however, required to take any specific action with regard to the rule itself. The publication of the final rule must include analyses of any relevant data or other materials submitted by the public and a justification of the form of the final rule in light of the comments the agency received.

If opposition to the proposed rule is exceptionally large or strident, the agency may decide to make substantial modifications and start the process over by publishing a new notice and opening a new comment period. Otherwise, the agency will publish its final findings along with the rule, which is codified in the Code of Federal Regulations.

#### Severs certainty and immediacy

#### 1---“Resolved”---means certain.

Webster’s Revised Dictionary 1996 ((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### 2---“Should”---mandates certainty.

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

#### The resolution is an instruction---should means must.

Supreme Court of Kansas 78. STATE OF KANSAS, Appellee, v. JAMES C. STUART, Appellant, and DARYL B… Date published: Feb 25, 1978. https://casetext.com/case/state-v-stuart-and-jones#p603

Defendants' other common complaint arises from the instruction on the jury's duty to find defendants not guilty if it has a reasonable doubt as to their guilt. The instruction was taken verbatim from PIK (Criminal) 52.02. Defendants argue the jury should have been instructed they "must" find the defendants not guilty if there is a reasonable doubt, rather than the jury "should" find the defendants not guilty. They argue the word "must" is mandatory and complies with K.S.A. 21-3109, while "should" is permissible and does not comply with the statute. We do not agree. In State v. Connor, 74 Kan. 898, 87 P. 703, this court held that the word "should" as used in instructions in a criminal case conveys a sense of duty and obligation and could not be misunderstood by a jury. The instruction used in this case has been held to be proper in State v. Wilkins, 215 Kan. 145, 523 P.2d 728, and State v. Taylor, 212 Kan. 780, 512 P.2d 449.

#### Rulemaking is a question of culture---counterplan’s model is key.

Kurt Walters 19. Harvard University, Harvard Law School, Harvard University, Harvard Law School, Students. “FTC Rulemaking: Existing Authorities & Recommendations”. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3794346

The FTC has the authority to issue substantive rules with the force of law proscribing unfair or deceptive acts or practices as well as unfair methods of competition. Rulemaking could thus be a critical tool for the agency in furthering its dual mission of protecting consumers and promoting competition. Following the “Reagan Revolution” at the Commission, though, these authorities have fallen into nearly complete disuse. With such broad and flexible authorities, agency norms and culture become critically important. As this memo will demonstrate, the decline in discretionary FTC rulemaking was driven far more by cultural changes at the agency and self- imposed procedural hurdles than by any legislative limitations from Congress. As such, this decline may be reversed.

Engaging now with the extent of the agency’s rulemaking authorities can lead to immediately actionable insights and position the Commission for effective regulatory action under a future majority committed to rulemaking. Before outlining the structure of this memo, what follows is a brief summary of its main conclusions.

#### 2---Notice and comment is consensus building---their ev doesn’t assume the process.

William E. Kovacic 21. Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. “The future adaptation of the per se rule of illegality in U.S. Antitrust law”. Columbia Business Law Review.

The public antitrust agencies—the DOJ, the FTC, and the state attorneys general—from time to time have convened public gatherings to examine developments in antitrust law.175 The agencies could apply their capability as convenors to conduct periodic assessments of the operation of per se rules of illegality and to build a consensus about what types of behavior are appropriate subjects for categorical prohibition.176 They could host proceedings in which academics, business officials, judges, policymakers, and practitioners analyze the existing set of per se prohibitions and discuss possibilities for expanding or reducing the set. One could imagine that such proceedings might take place on a regular basis—perhaps every five years. As a recent example, the FTC in 2020 held a public workshop on noncompete covenants as part of a larger set of deliberations on modern competition law and policy.177

An important aim of the periodic reassessment would be to take stock of ongoing advances in economic theory and in learning about business practices. This stock-taking would help illuminate the impact of existing per se rules and help interpret the experience that courts use as a basis for adjusting the class of conduct subject to per se condemnation. The agencies could prepare reports that distill the results of the reassessment proceedings and thus provide accessible means for courts to consider future adaptions to the per se rule.

#### Input key---the aff creates a democratic deficit.

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

The institutional aspects of today’s antitrust enterprise, however, are increasingly out of balance, threatening the democratic, economic, and political goals of the antitrust laws.5 The shift that Hofstadter first described has led to an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability. Some of this professional control is inevitable, of course, because antitrust is a system of legal ordering of economic relationships. But antitrust is also public law designed to serve public ends. Today’s unbalanced system puts too much control in the hands of technical experts, moving antitrust enforcement too far away from its democratic roots.

We characterize the result of this shift toward technocracy as antitrust’s democracy deficit.6 We draw upon the concept of a democracy deficit from the literature analyzing and critiquing the European Union (EU) and the World Trade Organization (WTO).7 The term has generally been used to refer to policymaking by unaccountable and nontransparent technocratic institutions far removed from democratic (or national) control.8 The concern over a democracy deficit has led Europeans to develop the principle of subsidiarity, which seeks to direct lawmaking and enforcement, where possible, to the level of government closest to the people affected by the decisions.9 Similar concerns have led the WTO to open its dispute resolution proceedings to participation by nongovernmental organizations and other affected parties.10

The concern for democratic decision making has also been reflected in a new interest in global administrative law and the importance of basic principles of transparency and due process as a way to control the administrative state.11 This interest in administrative law principles has likewise led to a closer examination of how well antitrust conforms to due process and institutional norms.12

Our concern over antitrust’s move away from more democratically controlled institutions toward greater reliance on technical experts is not just animated by a theoretical preference for democracy. As lawyers know, institutional arrangements affect outcomes. A preference for democratic institutions implicitly assumes that more democratically arranged institutions will, in general, produce preferable antitrust policies and outcomes. We think this is particularly true today, when the imbalance between democratic control and technocratic control has put antitrust on a thin diet of efficiency, one that has weakened antitrust’s ability to control corporate power. Nevertheless, our concern about a democracy deficit does not lead us to a full-throated embrace of William Jennings Bryan–style populism.13 Political values change over time with changes in the social sciences and the world more generally. Rather, we think that by redressing the democracy deficit we can move the needle back toward policies that reflect more general political understandings and views of antitrust policy, even if not all the way back to the nineteenth century.

#### 1. Zoom trials solve

Tommy Witherspoon 8-9. Staff writer at the Waco Tribune-Herald covering courts and criminal justice. “McLennan County judges punt civil jury trials to 2022 due to COVID-19.” August 9, 2021. https://wacotrib.com/news/local/crime-and-courts/mclennan-county-judges-punt-civil-jury-trials-to-2022-due-to-covid-19/article\_3abba7dc-f944-11eb-bcc3-8f717691805f.html

West and Kelly said they are watching the COVID-19 numbers closely. Both noted that while the ability to set regular trial dates in their courtrooms has helped unclog dockets and expedite case resolutions, they say public health concerns remain a priority if the numbers don’t improve. West said he would consider shutting down criminal jury trials in his court should active daily COVID-19 cases in the county hit 1,000. “Basically, we are going to do whatever we can do to keep the community safe,” West said. “If that means postponing criminal jury trials, we will do that, and continue the hearings via Zoom.” West and Kelly noted the efficiency of having plea hearings and other court matters via Zoom, with both predicting that the days are over when county jail officials loaded 15 inmates in vans to bring them to court for routine court proceedings. Menard, the county’s local administrative judge, said postponing civil trials until the end of the year won’t have as much effect as it first appears because the Base is not available for jury selection service during the 10-day Heart O’ Texas Fair and Rodeo, and the weeks around Thanksgiving and Christmas are historically non-jury weeks. Throw in Labor Day and that adds an additional week with no jury trials. Coley, who presides over 74th State District Court and the county’s juvenile court, said attorneys eager to get their clients into court for civil cases can always seek a trial before a judge, known as bench trials, or try to work out their cases through mediation.

#### 2. the pandemic helped improve court efficiency.

Julie M. Baldwin et. al, 20. Julie Marie Baldwin, PhD, is the Associate Director for Research for the Justice Programs Office at American University and a Scholar in Residence in the Department of Justice, Law & Criminology at American University. John M. Eassey, Ph.D. from the University of Florida and is currently a quantitative methodologist at American University. Erika J. Brooke, PhD, Lecturer in Criminology in the Department of Sociology and Criminology & Law at the University of Florida. "Court operations during the COVID-19 pandemic." American Journal of Criminal Justice 45, no. 4 (2020): 743-758.

At the same time, the current circumstances provide unique opportunities. In order to address the challenges posed by COVID-19, courts have been forced to explore innovative ways to achieve their mission. Ordinarily, organizational inertia is such that change is often incremental while the reasons for change have a tendency to get lost or get muddied due to changes in administration, loss of key personnel, and budgetary constraints that inevitably occur over time. By contrast, the current pandemic has forced rapid changed with a clear goal, operational continuity. While it remains to be seen which adaptations will persist in the post-pandemic era, it is possible that many courts will emerge from the pandemic more efficient, resourceful, and modernized in their operations.

### Case

#### No impact---the idea that a limited US-Russia war would go nuclear is Western propaganda.

Dr. Kristin Ven Bruusgaard 2020. Ph.D., Kings College London, Defense Studies. M.A. Security Studies, Georgetown University. Certificate in Eurasian, Russian & Eastern European Studies. Norwegian Defense Intelligence & Security School. B.A. (Hons) Politics and International Studies, Warwick University. MacArthur Nuclear Security Postdoctoral Fellowship, Center for International Security and Cooperation (CISAC) Stanford University. Previous Research Fellow at the Norwegian Institute for Defense Studies (IFS), worked a senior security policy analyst in the Norwegian Armed Forces, at the Norwegian Defense Research Establishment (FFI) and at the Congressional Research Service (CRS) in Washington, D.C., and at NATO HQ. “Russian nuclear strategy and conventional inferiority” Routledge Taylor & Francis Group. Journal of Strategic Studies 2020, 1-33 <https://doi.org/10.1080/01402390.2020.1818070>

**Western debates on Russian nuclear strategy** picked up significantly after the invasion of Crimea in 2014. [11](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0011) The perception of changed Russian foreign policy intentions, a modernised nuclear arsenal, and a reduced Russian interest in preserving arms control produced renewed debate on the content of Russian nuclear strategy. Contemporary debates revolve around **whether Russia has a strategy that involves the early and limited use of sub-strategic nuclear weapons**: a doctrine that has been called ‘escalating to de-escalate’. [12](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0012) US nuclear policy officially diagnoses Russian nuclear strategy according to this thesis. [13](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0013) The key proposition is that Russia’s threshold of nuclear weapons use is low and that it would use nuclear weapons early and in a limited manner in conflict in order to ‘de-escalate’ it and bring it to an early and decisive end. [14](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0014) The potentially coercive utility of nuclear weapons may provide a temptation for Russian policymakers to **pursue aggressive or revisionist ambitions against NATO states**. [15](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0015) According to this school, Russia believes the West is risk-averse and would be unable to remain united in a severe crisis. [16](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0016) Russia could use nuclear weapons to uphold a changed status quo and to force a Western surrender. [17](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0017) Although this **interpretation has gained prominence in Western policy circles**, a closer examination of its logic and assumptions demonstrates **three key shortcomings**. First, it **mirrors Western Cold War theories** about the coercive utility of rapid nuclear escalation onto Russian strategy. It **assumes that Russian leaders believe that it is possible to control escalation** because the adversary would be unwilling or incapable of matching it. Yet, a closer examination of the **evidence conveys a sustained Russian debate on the problem of controlling escalation**. Russian strategists debate the utility and credibility of a lowered nuclear threshold and the appropriate criteria for when to use nuclear weapons in conflict. [18](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0018) This debate has **produced a push for improved conventional options as a supplement to limited nuclear options**. This debate about how conventional and nuclear capabilities combined convey deterrent credibility is crucial to understanding Russian nuclear strategy today. Second, this Western interpretation of Russian strategy fails to reflect how Russian planners conceptualise the utility of nuclear weapons differently based on different conflict types. [19](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0019) The interpretation takes cues from limited war scenarios and limited objectives, derived from Russia’s 2008 war with Georgia and 2014 war in Ukraine. The coercive fait accompli model from the Crimean annexation is taken as key evidence of Russian ambitions to coerce NATO. [20](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0020) However, this model of potential nuclear weapons use **disregards the context** in which Russian strategists debated early and limited nuclear weapons use: **a regional war in which Russia was threatened by large-scale conventional aggression**. [21](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0021) **Russian strategists never argued that Russia should employ nuclear de-escalation in limited wars that were about limited objectives**. **Yet, Western debates have fixated on Russian limited nuclear use in limited war.** [**22**](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0022)Third, this interpretation of Russian nuclear strategy applies a static and potentially **outdated model of how nuclear weapons compensate for conventional inferiority**. It fails to account for the significant evolution in Russian conventional capabilities in the post-Cold War period and for how this has affected Russia’s reliance on nuclear threats. Much of the evidence used to back up the **predominant Western interpretation** of Russian strategy is from strategy debates and official statements of the late 1990s and early 2000s. [23](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0023) In this period, Russia did signal a reduced nuclear threshold, due to its lack of conventional response options. But even then, Russian strategists identified the key vulnerability in nuclear de-escalation, that of credibility and escalation management, and sought improved conventional capabilities to remedy for this vulnerability. [24](https://www.tandfonline.com/reader/content/10.1080/01402390.2020.1818070/format/epub/EPUB/xhtml/index.xhtml#fn0024) In the twenty years since, Russian strategy has evolved conceptually in how conventional and nuclear tools can influence an adversary, and materially in the balance of nuclear and conventional capabilities. States that face a conventionally superior adversary do not necessarily lean back and rest on their nuclear laurels: some seek to rectify their conventional inferiority. This suggests a need to re-examine existing theories about how conventional and nuclear forces and strategy affect each other.

#### Free-riding DA – Hegemonic foreign policy allows allied free-riding, shifting burdens onto the US and chain-ganging us into wars with Russia and China

Posen 13 – Barry R. Posen, Ford International Professor of Political Science and Director of the Security Studies Program at the Massachusetts Institute of Technology, 2013 (“Pull Back: The Case for a Less Activist Foreign Policy,” *Foreign Affairs*, January/February 2013 issue, <http://www.foreignaffairs.com/articles/138466/barry-r-posen/pull-back> | ADM)

Another problematic response to the United States' grand strategy comes from its friends: free-riding. The Cold War alliances that the country has worked so hard to maintain -- namely, NATO and the U.S.-Japanese security agreement -- have provided U.S. partners in Europe and Asia with such a high level of insurance that they have been able to steadily shrink their militaries and outsource their defense to Washington. European nations have cut their military spending by roughly 15 percent in real terms since the end of the Cold War, with the exception of the United Kingdom, which will soon join the rest as it carries out its austerity policy. Depending on how one counts, Japanese defense spending has been cut, or at best has remained stable, over the past decade. The government has unwisely devoted too much spending to ground forces, even as its leaders have expressed alarm at the rise of Chinese military power -- an air, missile, and naval threat.

Although these regions have avoided major wars, the United States has had to bear more and more of the burden of keeping the peace. It now spends 4.6 percent of its GDP on defense, whereas its European NATO allies collectively spend 1.6 percent and Japan spends 1.0 percent. With their high per capita GDPs, these allies can afford to devote more money to their militaries, yet they have no incentive to do so. And so while the U.S. government considers draconian cuts in social spending to restore the United States' fiscal health, it continues to subsidize the security of Germany and Japan. This is welfare for the rich.

U.S. security guarantees also encourage plucky allies to challenge more powerful states, confident that Washington will save them in the end -- a classic case of moral hazard. This phenomenon has caused the United States to incur political costs, antagonizing powers great and small for no gain and encouraging them to seek opportunities to provoke the United States in return. So far, the United States has escaped getting sucked into unnecessary wars, although Washington dodged a bullet in Taiwan when the Democratic Progressive Party of Chen Shui-bian governed the island, from 2000 to 2008. His frequent allusions to independence, which ran counter to U.S. policy but which some Bush administration officials reportedly encouraged, unnecessarily provoked the Chinese government; had he proceeded, he would have surely triggered a dangerous crisis. Chen would never have entertained such reckless rhetoric absent the long-standing backing of the U.S. government.

The Philippines and Vietnam (the latter of which has no formal defense treaty with Washington) also seem to have figured out that they can needle China over maritime boundary disputes and then seek shelter under the U.S. umbrella when China inevitably reacts. Not only do these disputes make it harder for Washington to cooperate with Beijing on issues of global importance; they also risk roping the United States into conflicts over strategically marginal territory.

Georgia is another state that has played this game to the United States' detriment. Overly confident of Washington's affection for it, the tiny republic deliberately challenged Russia over control of the disputed region of South Ossetia in August 2008. Regardless of how exactly the fighting began, Georgia acted far too adventurously given its size, proximity to Russia, and distance from any plausible source of military help. This needless war ironically made Russia look tough and the United States unreliable.

## 1nr

### Case

**No transition war**

1. **21st century has unifying features**

**Patriota 17** (Antonio De Aguiar, was appointed Ambassador to Italy, Malta and San Marino in August 2016. He was the Permanent Representative of Brazil to the United Nations from 2013 to 2016, May 2017, "Is the World Ready for Cooperative Multipolarity?", *Rising Powers in Global Governance,* , <http://risingpowersproject.com/quarterly/world-ready-cooperative-multipolarity/>, Volume 2, Issue 2, *Brazil: Geopolitical Challenges in a Multipolar World*, pp. 15-29, Accessed: 3-15-2018)

One of the most original features of the new configuration of power is the unprecedented fact that a non-European, non-Western power will assume the position of leading world economy during the decades ahead. China’s economic growth is destined to translate into increased diplomatic influence. The same will apply to other regional powers from the South as they enhance their global outreach, admittedly in nonlinear ways. A resurgent Russia will still continue to wield considerable military might. A highly developed Europe may find a renewed sense of cohesion with Germany, France and Italy at its center. Japan will be faced with new strategic dilemmas, whether the US-China relationship becomes more cooperative, or adversarial. How the United States responds to a new situation of relative loss of influence will be of major relevance to the international community: the Obama legacy with respect to Iran or Cuba point in one direction; the “exceptionalist” mindset still prevalent among many in the US in another.

It is not clear whether this new environment amplifies the space for multilateralism, diplomacy and cooperation. But a number of characteristics that were absent from previous transitions, unique to the early 21st century, create a distinct framework for opportunity – alongside and beyond the obvious pitfalls. Certain factors, that were not present at other turning points, can play – and indeed are already playing – a unifying role.

An important cross-cutting aspect is the higher degree of global interconnectedness among governments, economies and societies through, trade, investment, telecommunications, the media and people-to-people contacts. The flip side of this coin is the fact that this increase in connectivity may also be placed at the service of destabilizing agendas.

Among the most notable unifying elements is the challenge posed by global warming and climate change. This is a situation that, for the first time in human history, forces the community of nations to confront the stark reality that there will be no salvation without cooperation. It affects countries large and small independently of their level of development, and cannot be mitigated without the active engagement of the largest emitters. As the resolution that adopted the Paris Agreement in December 2015 acknowledges, “climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries” (United Nations, 2015).

Violent extremism conducive to terrorism is increasingly perceived as a global threat requiring comprehensive, coordinated international efforts. The failure of the so called “war on terror” has created a heightened awareness of the need for harmonized, multilaterally agreed approaches to curtail the phenomenon. A recent UN report on the subject was particularly direct when it stated that “we must take action now to save succeeding generations”.

The Ebola outbreak in 2014, which caused thousands of preventable deaths, has demonstrated that the world is ill-prepared to address the threat posed by epidemics. Although not a new threat in itself, the potentially devastating social and economic effects of health crises in an age of unprecedented human mobility has increased the level of international alert. The world drug problem is now considered a “common and shared responsibility”, as nations at different points in the production and consumption chain acknowledge the unsatisfactory results of the “war on drugs” and seek more effective solutions through multilaterally concerted efforts.

Moreover, it is possible to affirm that civil society is assuming an increasingly important role in influencing international debates and agendas, in contrast with previous eras or transitions. The appearance on the world stage of a myriad of non-governmental organizations promoting causes which range from gender equality to disarmament and non-proliferation represent a historical evolution that cannot be ignored.

### DA

#### U.S. ag collapse triggers economic collapse and global conflict

Klare 12 (Michael, professor of peace and world security studies at Hampshire College, August 8, 2012. “Michael T. Klare: The Hunger Wars in Our Future”. [http://www.guernicamag.com/daily/michael-t-klare-the-hunger-wars-in-our-future/](about:blank))

This, however, is just the beginning of the likely consequences: if history is any guide, rising food prices of this sort will also lead to widespread social unrest and violent conflict. Because so many nations depend on grain imports from the U.S. to supplement their own harvests, and because intense drought and floods are damaging crops elsewhere as well, food supplies are expected to shrink and prices to rise across the planet. Food–affordable food–is essential to human survival and well-being. Take that away, and people become anxious, desperate, and angry. In the United States, food represents only about 13 percent of the average household budget, a relatively small share, so a boost in food prices in 2013 will probably not prove overly taxing for most middle- and upper-income families. It could, however, produce considerable hardship for poor and unemployed Americans with limited resources. “You are talking about a real bite out of family budgets,”commented Ernie Gross, an agricultural economist at Omaha’s Creighton University. This could add to the discontent already evident in depressed and high-unemployment areas, perhaps prompting an intensified backlash against incumbent politicians and other forms of dissent and unrest. It is in the international arena, however, that the Great Drought is likely to have its most devastating effects. Because so many nations depend on grain imports from the U.S. to supplement their own harvests, and because intense drought and floods are damaging crops elsewhere as well, food supplies are expected to shrink and prices to rise across the planet. “What happens to the U.S. supply has immense impact around the world,” says Robert Thompson, a food expert at the Chicago Council on Global Affairs. As the crops most affected by the drought, corn and soybeans, disappear from world markets, he noted, the price of all grains, including wheat, is likely to soar, causing immense hardship to those who already have trouble affording enough food to feed their families. The Hunger Games, 2007-2011 What happens next is, of course, impossible to predict, but if the recent past is any guide, it could turn ugly. In 2007-2008, when rice, corn, and wheat experienced prices hikes of 100 percent or more, sharply higher prices–especially for bread–sparked “food riots” in more than two dozen countries, including Bangladesh, Cameroon, Egypt, Haiti, Indonesia, Senegal, and Yemen. In Haiti, the rioting became so violent and public confidence in the government’s ability to address the problem dropped so precipitously that the Haitian Senate voted to oust the country’s prime minister, Jacques-Édouard Alexis. In other countries, angry protestors clashed with army and police forces, leaving scores dead. Those price increases of 2007-2008 were largely attributed to the soaring cost of oil, which made food production more expensive. (Oil’s use is widespread in farming operations, irrigation, food delivery, and pesticide manufacture.) At the same time, increasing amounts of cropland worldwide were being diverted from food crops to the cultivation of plants used in making biofuels. The next price spike in 2010-11 was, however, closely associated with climate change. An intense drought gripped much of eastern Russia during the summer of 2010, reducing the wheat harvest in that breadbasket region by one-fifth and prompting Moscow to ban all wheat exports. Drought also hurt China’s grain harvest, while intense flooding destroyed much of Australia’s wheat crop. Together with other extreme-weather-related effects, these disasters sent wheat prices soaring by more than 50 percent and the price of most food staples by 32 percent. Once again, a surge in food prices resulted in widespread social unrest, this time concentrated in North Africa and the Middle East. The earliest protests arose over the cost of staples in Algeria and then Tunisia, where–no coincidence–the precipitating event was a young food vendor,Mohamed Bouazizi, setting himself on fire to protest government harassment. Anger over rising food and fuel prices combined with long-simmering resentments about government repression and corruption sparked what became known as the Arab Spring. The rising cost of basic staples, especially a loaf of bread, was also a cause of unrest in Egypt, Jordan, and Sudan. Other factors, notably anger at entrenched autocratic regimes, may have proved more powerful in those places, but as the author of Tropic of Chaos, Christian Parenti, wrote, “The initial trouble was traceable, at least in part, to the price of that loaf of bread.” Until recently, most scientists were reluctant to blame particular storms or droughts on global warming. Now, however, a growing number of scientists believe that such links can be demonstrated in certain cases. As for the current drought, analysts are already warning of instability in Africa, where corn is a major staple, and of increased popular unrest in China, where food prices are expected to rise at a time of growing hardship for that country’s vast pool of low-income, migratory workers and poor peasants. Higher food prices in the U.S. and China could also lead to reduced consumer spending on other goods, further contributing to the slowdown in the global economy and producing yet more worldwide misery, with unpredictable social consequences.

#### US ag collapse outweighs and turns the aff—causes resource wars, terrorism, WMD prolif, and global environmental destruction

Lugar 4 (Richard G., Former U.S. Senator – Indiana and Former Chair – Senate Foreign Relations Committee, “Plant Power”, Our Planet, 14(3), http://www.unep.org/ourplanet/imgversn/143/lugar.html)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. But we do so at our peril. One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

#### Will pass now but can be derailed

Max Pizarro, 9-14-2021, "Payne Says the House will Pass Biden Infrastructure Bill," Insider NJ, https://www.insidernj.com/payne-says-house-will-pass-biden-infrastructure-bill/

U.S. Rep. Donald Payne, Jr. (D-10) today said he is confident that the U.S. House of Representatives will pass a much-needed public infrastructure bill – with some compromises – that will lay the groundwork for New Jersey and New York to forge the Gateway Tunnel and other improvement projects.

House Speaker Nancy Pelosi, D-Calif., has promised centrist Democrats she will hold a vote on the Senate-passed bipartisan infrastructure bill by Sept. 27. The pledge is not binding, and politics within her caucus could complicate the timeline, according to MSNBC.

Payne said the House will get the job done.

#### Two track works now but requires all of Biden’s PC to keep Dem factions in line

Joan E Greve 09-7-2021, “Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill,” The Guardian, 9-7-2021, https://amp.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill

Congress will return from its summer recess later this month, and some Democrats are already gearing up for a political fight – with each other.

Democratic lawmakers are looking to pass their $3.5tn spending package, after the House and the Senate approved the blueprint for the budget bill last month. The ambitious legislation encompasses much of Joe Biden’s economic agenda, including proposals to expand access to affordable childcare, invest in climate-related initiatives and broaden Medicare coverage.

But to get the bill passed, Democrats will first need to reach an agreement on the cost of the legislation. Centrist Democrats, including Senators Kyrsten Sinema and Joe Manchin, have expressed concern about the bill’s $3.5tn price tag, while progressives have indicated they will fiercely oppose any attempt to cut funding in the proposal.

With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error.

Despite warning signs of intra-party friction over the cost of the budget bill, congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition, said the House’s focus right now should still be on the content of the legislation.

“I think discussion of a number is more distracting when the focus really needs to be on, what is the substance going to be of this legislation?” DelBene told the Guardian. “If we have strong legislation the people support, I think we can find the path forward.”

Over in the Senate, majority leader Chuck Schumer is attempting to advance the bill using reconciliation, meaning Democrats do not need any Republican support to pass the legislation. But the 50-50 split in the upper chamber means that every single Democratic senator must be on board to get the bill approved.

Schumer has been clear-eyed about the challenges ahead for the legislation. Shortly after the Senate approved the blueprint for the bill in a party-line vote last month, Schumer told reporters, “We’ve labored for months and months to reach this point, and we have no illusions – maybe the hardest work is yet to come.”

Manchin proved Schumer’s point last Thursday, when he wrote a Wall Street Journal op-ed calling for a “strategic pause” in advancing the spending package.

“While some have suggested this reconciliation legislation must be passed now, I believe that making budgetary decisions under artificial political deadlines never leads to good policy or sound decisions,” Manchin said in the op-ed. “I, for one, won’t support a $3.5tn bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs.”

Bernie Sanders, the leftwing chairman of the Senate budget committee, responded to Manchin’s warning in kind, threatening to torpedo the bipartisan infrastructure bill if the spending package is not approved.

“Rebuilding our crumbling physical infrastructure – roads, bridges, water systems – is important,” Sanders said on Twitter. “Rebuilding our crumbling human infrastructure – healthcare, education, climate change – is more important. No infrastructure bill without the $3.5tn reconciliation bill.”

Progressive groups have echoed Sanders’s argument, insisting that every component of the $3.5tn legislation is vital. Sanders had initially called for spending $6tn on the budget bill, so progressives already view the current price tag as a concession.

“We’re in a moment of crisis. Is this really the time for the Senate to press pause?” Ellen Sciales, the communications director of the climate group Sunrise Movement, said in a statement.

She added: “If the Senate can’t pass an incredibly popular climate and jobs plan during a summer of unprecedented, fatal climate disasters, and an economy reeling from a global pandemic, we must abolish the Senate. $3.5tn was the compromise.”

Natalia Salgado, the director of federal affairs for the Working Families Party, noted that some progressive economists have suggested the US needs to spend $10tn over 10 years to meet its obligations in the Paris Climate Agreement.

“We’re going to come nowhere near that,” Salgado said. “So we can’t afford to lose a single cent in this $3.5tn. Every single penny will count.”

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

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

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

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

The risk of the strategy is that, in trying to pass everything, Biden and congressional Democrats may end up with nothing.

#### It’s an opportunity cost.

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).

The opportunity costs for each hearing on such marginal issues, for example, whether professional baseball should continue to enjoy a partial exemption from the antitrust laws or grandstanding for constituents over the fate of a particular merger with a pronounced local effect, is high. Congress sacrifices time, money, and attention better used to study more important, broader issues of competition law and policy. Stated enforcement policy over unilateral conduct and merger policy have changed substantially between administrations and over time. Important guidelines and stated enforcement priorities have changed as well with little substantive Congressional involvement. 16 6 Critical decisions by the United States Supreme Court have changed the law in dramatic and subtle ways without significant Congressional input either before or after the decisions. 167

#### no link turn ---

#### Biden has to spend PC on the plan- bipartisan support doesn’t matter

Reed Karaim, 5-7-2021, "Reining In Big Tech," CQ Researcher by CQ Press, http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Biden must invest every drop of PC into reconciliation now- keeps Manchin and Sinema on board

BURGESS EVERETT & LAURA BARRÓN-LÓPEZ, 9-16-2021, "Dems call in big gun as they face huge Hill tests," POLITICO, https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

#### Biden has no room for error- needs every bit of PC for dual track bills

Domenico Montanaro, 8-24-2021, "Here's How Democrats Get Their Domestic Agenda Through — And It's Not Easy," NPR.org, https://www.npr.org/2021/08/24/1027592836/heres-how-democrats-get-their-domestic-agenda-through-and-its-not-easy

For Democrats, getting their historic domestic agenda done was already going to be a tough needle to thread, with a narrowly divided Congress and tensions within the party itself.

But now, because of the resurgent coronavirus due to the delta variant and the chaotic U.S. withdrawal in Afghanistan, President Biden's approval rating has dropped. His reduced influence and political capital don't leave much room for error on items that might be difficult to get through Congress.

And it doesn't get much more challenging than the path Democratic leaders are going down, pushing dual-track, multitrillion-dollar pieces of legislation — a $1 trillion infrastructure bill and a budget plan that could be $3.5 trillion.

"I think it is like backing a big semitrailer truck into a small loading dock," David Axelrod, a former senior adviser in the Obama White House, said in a recent interview. "It is an arduous, precise kind of maneuver where you have to move a little to the left, a little to the right, and hope at the end of the day, you land it right."

#### Winners don’t win – productivity and agenda success are INVERSELY related in polarized environments

Masket 14 (Seth, Assoc Prof of PoliSci @ University of Denver, “Unpopularity and Productivity are Related,” 12/19/4, http://www.mischiefsoffaction.com/)

But policy accomplishments don't really help a president much in terms of popularity. LBJ wasn't popular because he signed Medicare or the Civil Rights Act. It works the other way around; he was able to pass those in part because he was popular in 1964-65, thanks to a very strong economy and public goodwill in the wake of the Kennedy assassination. Notably, all his Great Society legislation didn't help him out once the public got annoyed by the Vietnam War; his party lost many seats in 1966 and he chose to resign rather than face the voters' wrath in 1968. Beyond that, to the extent productivity and popularity may be related today, they may run in the opposite direction. In a polarized political environment, a president's achievements are likely to generate as least as many enemies as friends. Take health care reform, Obama's signature accomplishment. No Democrat could credibly run for president in 2008 (or for many years before that) without health care reform being a top priority. That was the nature of the Democratic coalition for decades. Conversely, the Republican coalition had been organized for decades around preventing Democrats from enacting health care reform. Obama's efforts were bound to produce substantial pushback, just as Clinton's did twenty years ago. The passage of health care reform indeed exacerbated Democratic congressional losses in 2010, and may well have handed Republicans the House of Representatives. This doesn't mean that it was wrong for Democrats to pass health care reform or for Obama to do any of the things he's recently done. It just means that actually being productive will engender resistance. Obama is unpopular at least in part because he's been effective.

#### Wins don’t spillover—capital is finite

Schultz 13 (David, professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE). “Obama's dwindling prospects in a second term,” MinnPost, 1/22, http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term)

Four more years for Obama. Now what? What does Barack Obama do in his second term and what can he accomplish? Simply put, his options are limited and the prospects for major success quite limited. Presidential power is the power to persuade, as Richard Neustadt famously stated. Many factors determine presidential power and the ability to influence including personality (as James David Barber argued), attitude toward power, margin of victory, public support, support in Congress, and one’s sense of narrative or purpose. Additionally, presidential power is temporal, often greatest when one is first elected, and it is contextual, affected by competing items on an agenda. All of these factors affect the political power or capital of a president. Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections.

#### Win doesn’t spill over fast enough

Silber 7 (Marissa, PhD Political Science & Communication – focus on the Rhetoric of Presidential Policy-Making – Prof of Poli Sci – Samford, “WHAT MAKES A PRESIDENT QUACK?, Prepared for delivery at the 2007 Annual Meeting of the American Political Science Association, August 30th-September 2nd, 2007, UNDERSTANDING LAME DUCK STATUS THROUGH THE EYES OF THE MEDIA AND POLITICIANS”)

Important to the discussion of political capital is whether or not it can be replenished over a term. If a President expends political capital on his agenda, can it be replaced? Light suggests that “capital declines over time – public approval consistently falls: midterm losses occur” (31). Capital can be rebuilt, but only to a limited extent. The decline of capital makes it difficult to access information, recruit more expertise and maintain energy. If a lame duck President can be defined by a loss of political capital, this paper helps determine if such capital can be replenished or if a lame duck can accomplish little. Before determining this, a definition of a lame duck President must be developed.