# 1NC – Round 6 Texas

## Off-Case

### 1

T-Private

#### Private sector” means all non-governmental persons or entities, including non-profits

Senate Report 95, (Senate Report, 1995, 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1>)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### That includes any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### The aff only applies to conduct in a specific segment of the private sector

#### Vote neg:

#### 1---limits and ground---the number of potential subsets is infinite---any industry, production, single company, individuals could be included, which undermines clash; only big affs have link uniqueness

#### 2---precision---has the intent to define, exclude, AND is in legislative context

### 2

States CP

#### The fifty states and all relevant entities through the National Association of Attorneys General Antitrust Task Force should increase prohibitions on anticompetitive business practices by broadband common carriers.

#### The fifty states should fund startups for broadband common carriers

#### The Supreme Court of the United States ought to not preempt state antitrust laws.

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

### 3

CIL CP

The United States federal government should substantially increase its prohibitions on anticompetitive business practices by broadband common carriers by expanding the scope of its interpretive obligations under customary international law.

#### The CP competes and solves the case---it renders the same conduct equally unlawful, but expands CIL rather than antitrust statute---that signals U.S. adherence to norms of international economic law.

Banks ’12 [Ted; 2012; Scharf President, Compliance & Competition Consultants; Denver Journal of International Law & Policy, “40th Anniversary Edition: The International Law of Antitrust Compliance,” 368]

Introduction

It was not so long ago that the concept of international criminal law was an idea with which lawyers struggled. In 1987, Ved Nanda and M. Cherif Bassiouni put together what may have been the first one-volume compendium of information on antitrust, securities, extradition, tax, and other subjects that made up the developing area of international criminal law. Today, it is well-accepted that there are certain standards of behavior that are the norm in practically all nations, and through national laws and multinational treaties, these principles are entering the realm of customary international law.

Developments in the area of competition law, or antitrust as it is known in some countries, have been particularly dramatic. Countries understand that the encouragement of competition is a key to economic development, and national laws have been enacted where they did not exist before, along with enforcement cooperation agreements among increasing numbers of countries. 1 Enforcement of criminal antitrust laws takes place against both individuals and businesses, 2 and while it is clear that there are situations where business entities must be held responsible for actions of their employees, there are other situations where the intent of the corporation may be contrary to the actions of the employee. Throughout the world, in competition law, as well as in other areas of law, there is a consensus that it is appropriate for companies to adopt compliance and ethics programs to utilize management techniques to foster compliance with law. So, as standards of corporate [\*369] conduct become more universal, they reflect adherence to what is essentially an international law - the international law of competition. At the same time, more national authorities recognize that companies are expected to have compliance programs, and that a bona fide compliance program reflects a corporate intent not to violate the law, and therefore should be a positive factor in how authorities treat such companies, including as a mitigating factor for any penalty that might be imposed based on the ultra vires act by an employee.

It is well accepted that compliance and ethics programs are an expected part of corporate activity, and while no program can always guarantee human behavior, these programs do work to mitigate violations of law. Indeed, it can be said that it is now a standard for companies to have compliance programs or at least some elements of such programs such as codes of conduct. We submit that this growing recognition of the purpose of compliance and ethics programs has reached broad-based acceptance and should now be recognized in the competition law field by the United States and other governments as a standard of international law.

The Concept of Organizational Liability

Under many legal regimes, a corporation cannot be criminally punished for the actions of its employees, and until relatively recently (at least if you consider a century relatively recent), under the common law, a corporation was viewed as a legal fiction, 3 which could not be held liable for the criminal conduct of its employees. In the United States, it was not until 1909, in New York Central & Hudson River Railroad v. United States, 4 that the Supreme Court ruled that because the great majority of business transactions were conducted by corporations, it was time to abandon the "old and exploded doctrine" that a corporation was not indictable. 5 The Court reasoned that, as a matter of public policy, because a corporation could be held civilly liable, criminal liability should also follow. 6

This concept of corporate liability has been extended to the point where the business is often held liable for acts of employees even if the [\*370] company was not aware of the violation, 7 prohibited the conduct that led to the violation, 8 or there was no actual benefit to the corporation through the acts of the employee. 9 So even if none of the three justifications for corporate liability are present, i.e., knowledge, benefit, or authority, corporate liability for the acts of an employee - in addition to the liability of the employee - may still be found. A number of reasons have been given for this approach, but a consistent argument is that this type of liability will have an in terrorem effect on the corporation and force the entity to make certain that employees obey the law. 10 As a practical matter, it also reflects the reality that employees working through a corporation, whether or not their actions are authorized, can cause harm far beyond the abilities of one person. Therefore, according to this line of reasoning, it is appropriate that the entity be punished criminally (and pay civil damages).

The usual rule in the United States and other common law countries is that a corporation is liable for acts of agents and employees acting within the scope of their employment and, in most cases, with the intent to benefit the company. 11 This approach derives from the common law doctrine of respondeat superior, which held that a master is generally liable for the actions of servants, but may escape liability if the servant acts outside the scope of employment (i.e., takes action for [\*371] which there is no actual or apparent authority). 12 The concept of apparent authority, the authority that outsiders would normally assume the agent to possess judging from his or her position in the company and the circumstances surrounding previous instances of conduct, is often the foundation for a finding of corporate liability. 13 Employees are assumed to be acting within the scope of their employment 14 if they are doing acts on the corporation's behalf in the performance of their general line of work. 15 An agent must be "performing acts of the kind which he is authorized to perform, and those acts must be motivated - at least in part - by an intent to benefit the corporation." 16 It is not necessary that the acts actually benefited the corporation, only that they were intended to do so.

The court decisions and statutes that led to these multiple bases for finding enterprise liability grew up in an era where there was recognition of the power of the "faceless" corporation and the need to control its activities. Courts would impute knowledge or intent to the corporation, even where there was no benefit to the enterprise by the wrongful acts of the employee and the activities did not benefit the corporation, although some courts are willing to consider whether the violation was foreseeable. 17 In other situations, liability might be imputed to a corporate officer or director for failure to exert their authority to ensure that the corporation (i.e., acting through employees) did not do wrong. 18

But it is also an inescapable fact of our human existence that people are fallible, and that in some cases people will ignore instructions and do things that they were expressly forbidden to do. By holding a corporation liable for virtually anything that any employee does, a situation of strict liability is created that may, in fact, be outside the scope of many laws that require an intent to violate the law. [\*372] Notwithstanding the desire to control the power of the corporation, there are limits to what it can do. The efforts of the corporation to control the actions of employees are a valid consideration in determining whether the corporation should be held liable for the actions of an employee, as was noted in the instructions to the jury after the trial of Arthur Andersen in connection with the Enron debacle:

If an agent was acting within the scope of his or her employment, the fact that the agent's act was illegal, contrary to the partnership's instructions, or against the partnership's policies does not relieve the partnership of responsibility for the agent's acts. A partnership may be held responsible for the acts its agents performed within the scope of their employment even though the agent's conduct may be contrary to the partnership's actual instructions or contrary to the partnership's stated policies. You may, however, consider the existence of Andersen's policies and instructions, and the diligence of its efforts to enforce any such policies and instructions, in determining whether the firm's agents were acting within the scope of their employment. 19

The key here is "diligence." Was a compliance program something that existed only on paper, 20 or were there indicia of sincerity on the part of the corporation that showed that it legitimately tried to enforce its policy of compliance? The diligence of the corporation in enforcing its policy should be a key factor in determining if it is the kind of program that should entitle the corporation to some measure of mitigation from legal penalties imposed as a result of the actions of an employee that disobeyed the policy. 21

[\*373] Competition law imposes certain standards of behavior that are accepted because of an understanding that society benefits from competition. Therefore, in most cases, cartels are prohibited, as is abuse of market power or dominance. There is a recognition in many areas of law that transparency is beneficial, and thus bribes or secret rebates are prohibited for their disruptive impact on competition, as well as their inherent corruptness.

But how do these standards become accepted? It is not sufficient only to implement national laws and multinational agreements. Enforcement authorities recognize that there must also be private action to enforce policies within corporations and to demonstrate that noncompliance with law will not be tolerated. As will be discussed below, there are benchmarks of what is an "effective" compliance and ethics program that have received broad-based acceptance. Standards of international competition law cannot have their desired impact without international standards and efforts for compliance. Companies need to be able to know that what they do to implement compliance standards does matter so that they will make a diligent effort to prevent cartel behavior from happening. If a company has taken serious action to enforce its standards, such as by discharge of employees who violate the law, 22 this level of corporate compliance, which is expected by enforcement authorities, should be recognized when deciding how to treat corporations, including charging and penalty decisions.

So, there is a combination of factors at work here. Competition law standards are virtually universal in their acceptance. 23 To get those standards to actually be implemented by corporations, there need to be corporate compliance and ethics programs in place. Standards of culpability recognize that factors such as intent, knowledge, and benefit are relevant to findings of corporate liability. A number of countries do specifically encourage compliance and ethics programs, including in the antitrust area. 24 Therefore, this growing, worldwide acceptance, combined with universal necessity, has established an international law not just for antitrust, but for antitrust compliance. The countries that do not formally recognize the value of bona fide compliance programs as relevant to corporate liability, perhaps seduced by the possibility of collecting huge fines from a corporate piggy-bank, are out-of-step with the reality of what is necessary to truly promote the principles of competition law.

#### U.S. commitment prevents the disintegration of international economic law---extinction.

Arcuri ’20 [Alessandra; 2020; Full Professor of Inclusive Global Law and Governance at the Erasmus School of Law, Journal of International Economic Law, “International Economic Law and Disintegration: Beware the Schmittean Moment,” vol. 23]

Introduction

There was a time when national sovereignty was out of fashion. In the nineties, international lawyers were engaged in imaging the global order beyond the nation-state. Theories to make this order possible were proliferating: from Global Administrative Law to global constitutionalism.1 International Economic Law (IEL) played an important role in the journey toward the global order. Our markets could be integrated through an almost brand new organization, the World Trade Organization (WTO). The WTO was created and endowed with a powerful set of new agreements, promoting the harmonization of health and safety law—through the Sanitary and Phytosanitary (SPS) Agreement—and technical regulation—Technical Barriers to Trade (TBT) Agreement—and establishing (relatively uniform) Intellectual Property Rights regimes worldwide (the TRIPS Agreement). The WTO also included a brand new dispute settlement system, considered by many as a manifestation of the rule of law at the international level. Similarly, organizations such as the World Bank and the International Monetary Fund (IMF) were indirectly spreading (de-)regulatory policies throughout the developing world.2 Globalization, nudged by a global technocratic elite, was alive and kicking, back then.

Today we face a crisis of the regime of international economic law and, more broadly, global economic governance. The system appears broken for its incapacity to face some of the most daunting challenges of our time: the widespread and dramatic process of environmental degradation and the unacceptable inequalities between poor and rich. On its face, the phenomenon of far-right populists, partly reflected in Brexit and Trump politics, and spreading across the Atlantic is shaking the system of international economic law, by hailing nationalist policies. The idea that the nation-state may be a desirable source of disintegration of the global (legal) order is gaining traction across the political spectrum. It appears clear that the answer to the legitimacy crisis of the system of international economic law and governance offered by progressives3 resorts also to entrusting the nation state with more political space—a space that allegedly has been unduly constrained by the global economic order.

Not only politicians but also progressive academicians, such as Professor Dani Rodrik, have defended the importance of national sovereignty,4 as one of the necessary paradigms to fix our broken world order. The gist of the reasoning is simple: global institutions went too far in eroding national sovereignty, which is the real basis for democratic liberal regimes. Without the nation-state, environmental, industrial, and redistributive policies cannot be realized. As Rodrik put it: ‘So, I accept that nation-states are a source of disintegration for the global economy.’5

This article critically engages with the idea that the nation-state is a legitimate force of disintegration of the international economic order, with particular attention to trade and investment agreements. There are disparate circumstances, from the realm of food safety regulation to the regulation of capital flows,6 in which it is arguably desirable that domestic institutions (re-)gain more power. Most importantly, the nation-state is today an important site of democracy and, only for that reason, it is worth defending. Yet, in times of raising authoritarianism, it is crucial to reflect on some of the limits of the nation-state and on the necessity to develop alternative paradigms for integrating economies and societies.

This article presents a two-fold critique of the idea that an expansion of national sovereignty is going to achieve a better socio-economic world order per se. The first critique is internal, showing that the nation-state does not possess intrinsic characteristics to facilitate democracy, equality, and sustainability. The second is external and focuses on the necessity to look reflexively at the goals of the system of international economic law, to re-imagine it as capable to address questions of inequality and environmental degradation.

In a more pragmatic fashion, this article posits that more nation-state may be a misleading and possibly dangerous response to today’s daunting challenges. It is misleading in so far as it promises solutions that nation-states alone cannot deliver. It is dangerous in so far as the rhetoric of the nation-state paradoxically facilitates the turn toward an expansion of the ‘rule of exception’ and, eventually, authoritarianism. Above all, in advocating for disintegration through the nation-state, we need to reckon with our haunting past where economic autarchy has been deeply intertwined with the ascent of fascism and Nazism. If today the nation-state may appear as a beacon of democracy, the role of nationalism in generating the nemesis of democracy should not be neglected. In short, and at the risk of oversimplification, ‘America first’ echoes too closely fascist slogans.7

I. A PROGRESSIVE DEFENSE OF THE NATION-STATE AND THE RISK OF A ‘SCHMITTEAN MOMENT’

Let me start by rehashing the two interconnected and equally formidable challenges we are facing today: the question of environmental degradation and the unacceptable level of inequalities whereby a large part of the population in the world lives in poverty (both in developing and developed countries, but still overwhelmingly concentrated in so-called developing countries) vis-à-vis a small elite enjoying incredible wealth. Economic integration that does not deal with these challenges is not only doomed to fail; it is a type of economic integration that we should not aspire to.

It is plausible that Brexit and the disintegrationist economic policy of Trump have been partly enabled by the growing inequalities in the Anglophone nations. It is no brainer that a large fraction of Brexiteers and Trump voters are the ‘left behind.’8 In wealthy countries, the working class often felt left behind by thriving globalization, which has benefited only the elites. The—often labelled—‘populist turn’ rests on the idea that the ‘other’, the ‘foreigner’ has stolen ‘our’ welfare and a more nationalistic policy is needed to protect the losers of the current state of affairs. This is evident from Trump’s slogan ‘Buy American, Hire American.’ It is worrying how this type of nationalism is entrenched in racism and in the othering of the non-American.

However, as mentioned earlier, the case for more nation-state has also been made by ‘progressive’ politicians and intellectuals. Among progressive economists, Dani Rodrik stands out for having defended the nation-state with compelling arguments. Let me quote him at length: ‘When it comes to providing the arrangements that markets rely on, the nation-state remains the only effective actor, the only game in town. Our elites’ and technocrats’ obsession with globalism weakens citizenship where it is most needed—at home—and makes it more difficult to achieve economic prosperity, financial stability, social inclusion, and other desirable objectives.’9 Not only is the nation-state the only game in town, when it comes to issues of redistribution, social security and safety, the nation-state is also desirable because it can deliver institutional diversity which is needed to realize the social contract: ‘Developing nations have different institutional requirements than rich nations. There are, in short, strong arguments against global institutional harmonization.’10 The nation-states can meet different preferences, and ‘[i]nsufficient appreciation of the value of nation-states leads to dead ends.’ Rodrik also concedes that international market liberalization is the offspring of well-functioning nation-states rather than international institutions: ‘Domestic political bargains, more than GATT rules, sustained the openness that came to prevail.’11 Against this background, Rodrik defends ‘economic populism’ in so far as it constitutes a form of resistance to ‘liberal technocrats’ imposing undue restraints on domestic economic policy.12 The rigid focus on price stability in low-inflation environments is a clear example of global or EU-driven policies largely insensitive to the effects on employment and paradoxically even growth.13

Many of Rodrik’s arguments are compelling, such as his critique of the economic profession’s misleading analysis of trade and investment agreements. Some of his reform proposals, such as the strengthening of green industrial policy,14 are arguably desirable. Most crucially, the nation-state may be at present one of the most developed sites of democracy, albeit an imperfect one. When global institutions constrain nation-state policies formed following democratic decision-making, this may legitimately be seen as a threat to democracy. Rodrik’s work has had a wide echo in legal circles, as evidenced by the publication of a book with the goal of reimagining trade and investment law, 15 which is opened by several chapters all commenting—in overwhelmingly positive terms—on Rodrik’s Straight Talks on Trade. The nation-state and, more generally, sovereignty is (re-)gaining traction also among progressive political theorists. In times of economic and existential uncertainties, sovereignty is there to offer protection ‘from unfettered markets and from permanently incumbent austerity’ and it constitutes a ‘refusal of a “liquid society” and of its very solid … inequalities.’16 Some of the most lucid analyses of the current international economic order point at the dramatic consequences of an increase of capitalist power that has incapacitated states to act in defense of its own people.17 The attention on sovereignty is also partly reflected in recently negotiated provisions of new trade and investment agreements, where states are explicitly endowed with a ‘right to regulate.’ Despite the unclear practical implications of such jargon, its symbolic value is unambiguously bearing witness to the shared view that states ought to maintain (or regain) political space. Against this background, Trump’s claims to defend the Ohio steel workers by whatever trade measures it takes may appear more acceptable. Could we then read in this reinvigorated faith in sovereignty a ‘Grotian moment’?18

Without indulging on this question, this article posits that we should beware the ‘risk’ of entering a ‘Schmittean moment’.19 This term is here used to refer to a major shift toward an ideal of unfettered national sovereignty as the chief paradigm to re-orient the international (economic) order. Under such ideal, any international normative benchmark is brushed away by an allegedly more intellectually honest ‘political’ dimension, which can find its realization only in the decisionist state.20 To understand the risk of a ‘Schmittean moment’, it is important to recognize that the move toward more nation-state is partly animated by the legitimate concerns over the existing international legal order; legitimate concerns, which have eloquently been articulated by Schmitt himself.

Carl Schmitt’s work offers a lucid critique of the ‘exclusionary character of liberal universalism.’21 His critique exposes the hypocrisy underpinning many universalisms, most prominently the legal canon of ‘just’ war.22 In fact, it is the very core of the contemporary international legal project that gets questioned: ‘The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form, it is a specific vehicle of economic imperialism. Here, one is reminded of a somewhat modified expression of Proudhon’s: whoever invokes humanity wants to cheat.’23 This argument has direct relevance for the domain of international economic law. In an endnote to this claim—discussing the extermination of Indians in North America—Schmitt explains the danger to use certain moral canons as exclusionary devices: ‘As civilization progresses and morality rises, even less harmless things than devouring human flesh could perhaps qualify as deserving to be outlawed in such a manner. Maybe one day, it will be enough if people were unable to pay its debts.’24 This consideration is of extreme actuality in relation to the current international legal order, which seems to have crystallized structures of annihilation of debt states, and their very peoples.25 In decrying how the economical is rescinded by the political, Schmitt unveils the absent ‘presence’ of (mostly American) politics in the economy. In short, Schmitt’s analysis cogently engages with the problem of depoliticization that the international liberal order yields.26 It is at this juncture that the thoughts of Schmitt and Rodrik may intersect. In some sense, Schmitt’s critique resonates with the critique of ‘hyper-globalization’ articulated by Rodrik:27 ‘one type of failure arose from pushing rule making onto supranational domains too far beyond the reach of political debate and control.’28

Before elaborating on this intersection, it is key to rehash some flaws of Schmitt’s analysis. While he has certainly a point in showing how liberal universalism can be used to arbitrarily exert hegemonic power in the name of humanity (and has so been used in such way by the US and other predominantly Western countries), the alternative he implicitly propounds rests on a nostalgia for a mythical past—a golden age based on the jus publicum Europaeum. Regrettably, this age has been golden only for some; the jus publicum Europaeum for all its glory was made of colonial relations, exploitation, and violence. It has also been noted how Schmitt’s historical analysis, which portrays the times of the jus publicum Europaeum as times where war gets domesticated by the modern state eclipses the fact that the ‘development of the modern state apparatus … helped bring about unprecedented capacities for organized state violence, even if such violence was no longer typically unleashed against fellow Europeans.’29 His conception of sovereignty, which finds essential realization only in the ‘unlimited jurisdictional competence’ normalizes the rule of exception. A related trouble with Schmitt’s core normative ideas is the totalizing enemy-friendship antithesis: ‘the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.’30 This is particular fatal to an ideal of nonviolent international law, as it denies even the aspiration of solidarity beyond borders.31 In other words, Schmitt conceptualization of the international legal order crystallizes nation-state borders in deeper existential structures, leaving no hope for common projects of different communities inhabiting the earth. In exposing the violence of allegedly humanitarian projects, Schmitt is de facto hollowing out the concept humanity, reducing its essence to violence in potentia: ‘the entire life of a human being is a struggle and every human being symbolically a combatant. The friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing.’32 In denouncing the hypocrisy of moralism, Schmitt seems to negate the possibility of morality altogether. The Nomos of the earth, starting with the act of appropriation—nehmen (take)—and continuing with dividing the land—nemein (divide)—does not engage with the morality of the first act of appropriation nor with its division. And this is also what Hanna Arendt contests to Schmitt: ‘to remove justice from the content of the law.’33

### 4

Regulation CP

The United States federal government should:

* maintain the current scope of its antitrust laws and announce intent to do so,
* substantially increase its regulation of anticompetitive business practices protected by the common carrier exemption

#### Regulation solves and contains spillover.

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A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

### 5

BizCon DA

#### The plan spills over, decimating business confidence and overall economic recovery

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From the House Judiciary report calling for dramatic antitrust reform to federal antitrust regulators and state attorneys general initiating lawsuits against Facebook and Google, government officials are once again calling for more aggressive antitrust enforcement to go after America’s tech businesses.

And while critics from all sides are reaching for any and all tools to go after “Big Tech,” weaponizing antitrust will only end up harming American consumers and the American economy at a time when we’re still trying to keep our heads above water.

Using antitrust to go after American tech won’t stop at Silicon Valley. Every sector of our economy will be at risk of politically motivated antitrust enforcement. And that won’t just hurt consumers searching for information on Google or shopping for products on Amazon — America’s economy could lose its global competitiveness amid a global pandemic.

In fact, the recent cases against Google from the Department of Justice and state attorneys general are a great example of just how this misuse of antitrust could harm Americans across the country and halt innovation in its tracks.

These suits conveniently forget how consumers benefit from Google’s suite of products in attempts to claim that Google unfairly monopolized the search and search advertising markets. Even worse, by claiming consumer harm, the government fails to truly grasp what consumers actually want.

You see, under the consumer welfare standard, antitrust enforcement is built to focus on what consumers want and whether consumers benefit. When the government argues Google is harming Americans because its products are preinstalled and even the default search engine on Apple, the government forgets that American consumers don’t think this is a problem.

The vast majority of search users prefer Google to its competitors. And through preinstallation, we get free-to-use products, quick searches and near-limitless information in an integrated system with the click of a mouse. It isn’t a problem; it’s a time saver. Further, because Google can reinvest in developing more user-friendly tech in a preinstalled ecosystem, we get interoperable apps that make our experience that much more convenient and intuitive. And even if consumers do want a different app, they can fix this problem with no heavy leg work or travel — just the swipe of a finger.

But if the government gets its way, the message could be disastrous for innovation: Even if your business benefits Americans and improves the user experience, the government can still put a target on your back. Not to mention, the government would be more likely to put a target on your back if you’re large and politically disfavored. Consumers across the internet and the American economy would be hurt and left without more accessible and more affordable technology as options.

We should be working to reward, not punish, innovation. Otherwise, the next Google may just decide it isn’t worth the time and effort.

Similarly, the Federal Trade Commission’s recent case against Facebook also puts the wants of policymakers above the actual interests of consumers.

Here, the government claims that Facebook harms consumers by acquiring and then integrating services like Instagram and WhatsApp. So harmful, the Federal Trade Commission says, that Facebook must divest from these services, even if that would harm American consumers, innovation and entrepreneurship for decades to come.

But this is not a case of consumer harm or bad behavior — Facebook’s acquisition of Instagram and WhatsApp helped ensure that consumers’ desires were prioritized. Through millions of investment dollars into research and development, Facebook turned good services into great services that consumers actively keep coming back to.

Through relentless product improvement, WhatsApp became a free-to-use platform and Instagram became one of the most successful photo-sharing social media apps in the world. In both cases, consumers benefited from convenient and state-of-the-art advancements. No longer do we have to pay to use messaging or search through multiple results to shop our influencer feed.

As it stands, the Federal Trade Commission case could splinter one successful tech company into multiple, less efficient organizations, setting a precedent that could affect every American industry. Consumers would not only lose Facebook’s free-to-use services but also potentially the next big clothing brand or the next hit microbrewed beer.

By impeding mergers, the sheer fear of potential antitrust enforcement would shutter the doors on small businesses from all sectors of the economy. So much investment in innovation is built on the possibility of being acquired by a larger player. Entrepreneurs and innovators from manufacturing, automotive and tech alike would be left with an unfortunate takeaway — succeed and benefit consumers, but not too much.

And with an economy still struggling to recover, the absolute last thing we need is to leave consumers without innovative and affordable choices, small businesses without key investment opportunities and our economy without a competitive edge globally.

But by weaponizing antitrust, we’ll get neither thoughtful intervention nor consumer benefits. Instead, the United States will lose ground to foreign competitors and American consumers will ultimately pay the price.

#### Decline cascades---nuclear war

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

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

INTRODUCTION

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

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

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

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

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

METHODOLOGY

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

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

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

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

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

ECONOMY

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL

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

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

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

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

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

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

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

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

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

GEOPOLITICAL

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

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

### 6

FTC DA

#### Courts have gutted FTC anti-fraud measures---Congress will pass a legislative fix now, BUT it’ll be a referendum on FTC overreach.

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It is hard to imagine a favorable outcome for the FTC after this oral argument. The Court will prob- ably limit 13(b) relief to injunctions, requiring the Commission to resort to cumbersome administrative proceedings to get any monetary relief. That would dramatically undermine the Commission’s work over several decades to build a robust fraud program.40 It would leave Section 5 and 19 as the only avenues for monetary relief under the FTC’s general consumer protection authority. Under Section 5, the Commission may impose monetary civil penalties under some limited circumstances.41 Under Section 19, the Commission may obtain monetary consumer redress or disgorgement but only after obtaining a final cease-and-desist order through administrative litigation and only after demonstrating that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”42 Moreover, Section 19 includes a statute of limitations whereas Section 13(b) does not.43 Thus, the FTC has strongly favored Section 13(b) actions. At oral argument, the FTC conceded that going directly to court is “more attractive in certain instances” and that the Commission brings “far more [consumer protection] cases” in court than through its own administrative proceedings.

An Unlikely Out for the FTC. It is worth noting that the Court could also rule against the FTC in a more limited way, although there was little indication at oral argument that it would. Last term, the Court held 8-1 in Liu v. SEC that even where a statute permitted “any equitable relief that may be appropriate,” the government’s equitable monetary relief could not exceed the wrongdoer’s net profits.44 Justice Sotomayor wrote for the court that the government cannot impose a “penalty” under equity; therefore actual net profits is all that restitution or disgorgement allows.45

If the FTC could still obtain “net profits,” AMG would not be a total loss for the agency. AMG argued in the briefs that the Ninth Circuit “did not limit the Commission’s recovery to anything close to net profits” when it awarded the FTC $1.27 billion, which was more than triple the amount that petitioners had allegedly received.46 But the textual difference between 13(b)’s “permanent injunction” and the SEC statute’s “any equitable relief that may be appropriate” makes it unlikely that the FTC will win even this less-than-half a loaf. Instead, the FTC will likely lose any ability to obtain monetary relief under 13(b). And limits to its ability to obtain even injunctive relief may also soon bubble up to the Supreme Court.

Even for Injunctive Relief, Lower Courts Are Reconsidering Whether Past Misconduct Is Actionable Under 13(b)

As noted above, Section 13(b) gives the FTC the authority to obtain injunctions in federal court only where a defendant “is violating, or is about to violate” the law. It is hornbook law that injunctive relief cannot be based solely on past conduct.47 Instead, there must be a present violation or some prospect of future violation. But the circuits differ on how likely the future violation must be.

The majority view has been that 13(b) requires the typical injunction predicate—“some cogniza- ble danger of recurrent violation, something more than the mere possibility.”48 The Ninth Circuit is a good example, having long embraced this standard in Section 13(b) cases.49 Most of the lower courts continue to rely on the “cognizable danger” standard, with the Ninth Circuit showing no signs of altering its view.50 This is a “likelihood of recurrence” standard, based on a factual analy- sis of the totality of the circumstances. On this reading, 13(b)’s “about to violate” language adds nothing to the inherent injunctive relief requirements.

Shire Leads the Way. The Third Circuit recently adopted a more demanding threshold. In Shire Viropharma, the court held that the “about to violate” provision plainly limited injunctive relief to “impending conduct.”51 The court reasoned that 13(b) “was not designed to address hypothetical conduct or the mere suspicion that such conduct may yet occur”; that it is not enough for the FTC to allege a “vague and generalized likelihood of recurrent conduct.”52 Moreover, the court held that the 13(b) requirement applies “right out of the gate” at the pleading stage, rather than at a later stage when the court is considering appropriate remedies.53 The Third Circuit thus upheld the trial court’s conclusion that the FTC failed to meet the 13(b) threshold when it merely alleged that the defendant had the “incentive and opportunity” to commit violations like it had in the past.54 The FTC did not petition for certiorari, presumably out of concern that the Supreme Court might adopt the Shire view.55

No other circuit has squarely addressed the Third Circuit’s view. Some lower courts in other cir- cuits have at least acknowledged Shire’s holding without explicitly rejecting it.56 Procedurally, we should expect more of these challenges to occur at the pleading stage, creating early opportunities for appellate review and Supreme Court cert petitions.57 Indeed, even some district courts in the Shire-hostile Ninth Circuit have nevertheless entertained 13(b) challenges “right out of the gate” at the motion to dismiss stage.58 Moreover, regardless of whether courts go so far as to adopt the Shire test, violators may sometimes be able to avoid any action under 13(b) by ceasing their violations before the FTC files suit. For example, a district court in the Ninth Circuit granted summary judgment where Amazon had ceased the alleged practice after the FTC began an administrative investigation but before the suit was filed, and the court could find no “cognizable danger of a recurring violation.”59

A Shire-style defense is not just permitted at the pleading stage, it likely must be raised early oth- erwise it will be forfeited. The Shire court held flatly that “13(b)’s ‘is’ or ‘is about to violate’ requirement is non-jurisdictional.”60 This is no academic distinction. It means that a Shire argument might have to be raised on a motion to dismiss. The sometimes obtuse and varied rules of waiver and forfeiture may control whether a Shire defense has fallen out of the case.61 While circuits do not have uniform rules, they all agree that “waiver and forfeiture rules . . . ensure that parties can determine when an issue is out of the case, and that litigation remains, to the extent possible, an orderly progression.”62

Failure to timely raise a Shire argument has already tripped up one prominent defendant. In FTC v. Vyera, the Southern District of New York recently rejected a 13(b) challenge framed as an affirmative defense because “Defendants had a full opportunity to challenge the sufficiency of the pleading at the motion to dismiss stage.”63

The potential impact of Shire has not gone unnoticed by consumer protection advocates. In a recent congressional hearing, one advocate argued that, under Shire, “wrongdoers that line their pockets with money they have illegally obtained can sail off into the sunset just as long as they retire their scams before the FTC catches up with them.”64 Jessica Rich, former Director of the FTC’s Bureau of Consumer Protection, similarly noted that Shire limited the FTC’s authority to remedy past conduct and called for Congressional action.65

Whether under Shire in the Third Circuit or under less-restrictive standards in the Ninth Circuit and elsewhere, courts’ limitations on injunctive relief under Section 13(b) increasingly curtail the availability of the FTC’s go-directly-to-court approach of the past few decades. Nobody would dispute that— as the Chief Justice observed at AMG oral arguments—an agency only has the authority delegated to it by Congress.66 Of course, Congress may yet delegate more authority than the FTC already has.

Congressional Activity in the New Administration

In light of the incursions into the FTC’s Section 13(b) authority, Congress may well expressly legislate to broaden or clarify the Commission’s authority. In the last Congress, Senator Roger Wicker (R-MS) introduced a bill that would have both allowed the FTC to bring a 13(b) suit even where the offender merely “has violated” the law, and expressly allowed for “restitution for consumer loss,” “rescission or reformation of contracts,” and “the refund of money or return of property.”67 Such an approach would, in one fell swoop, end any uncertainty about the FTC’s authority to go directly to court even for past violations and obtain monetary relief. The prospects of any such legislation are unclear, but there can be no doubt that if the Supreme Court rules in favor of AMG, some in Congress will seek to give the FTC more express authority. The trend in Shire—and even in courts with less stringent standards for injunctive relief—only adds fuel to that fire.

Back in October 2020, all five then-Commissioners urged Congress to pass legislation to “swiftly []clarify the statutory text and allow us to continue to protect consumers.”68 They warned that “13(b) is a critical tool in our enforcement mission” but that AMG and Shire were “grave” “judicial threats” to “the FTC’s ability to protect consumers.”69 With a Democratic-majority FTC and the Biden administration expected to take a forward-leaning approach on consumer protection, Congressional “clarification” would likely garner broad executive branch support.70

In February, the Subcommittee on Consumer Protection and Commerce of the Committee on Energy and Commerce held a hearing ostensibly focused on “Fighting Fraud and Scams During the Pandemic.”71 Discussion of AMG, Shire, and 13(b) dominated the hearing. Subcommittee Chair Jan- ice D. Schakowsky stated that “[u]nder 13(b), the FTC can require defrauders to provide restitution (money) to individuals who have been defrauded. Unfortunately, this authority is under assault at the Supreme Court, and the FTC may find itself deprived of a critical tool.”72 She argued that “reaffirming the FTC 13(b) authority is a bipartisan issue at the Commission as it should be everywhere.”73

While Congressional activity and interest may be easy to predict if the Court rules in AMG as anticipated, the outcome of that activity is entirely uncertain. Opening the FTC Act to amendment is likely to lead to a broader Congressional referendum on the Act as a whole, with various members of Congress seeking to amend the Act in ways unrelated to the 13(b) issues currently in dispute. For example, some members are likely to seek broader FTC rulemaking authority while others may use the opportunity to press for the transfer of powers from the agency to a new agency empow- ered to address privacy concerns or even digital markets as a whole. This will undoubtedly complicate the ability of Congress to address the relatively narrow issue teed up in AMG and leaves the future of FTC monetary—and potentially injunctive—relief in jeopardy. ●

ADDENDUM

On April 22, 2021, a day after this article was published, the United States Supreme Court unanimously decided AMG Capital Management v. FTC. That decision marks the end of the FTC’s broad exercise of Section 13(b) authority to get money back from those who violate the FTC Act—for now.

In a unanimous decision written by Justice Breyer, the Supreme Court held that the statute does not authorize the FTC to seek “equitable monetary relief such as restitution or disgorgement.” In essence, the Court decided that Section 13(b)’s reference to a “permanent injunction” means just that and no more. So, for monetary relief, the FTC is now left with its existing authority under Section 19 of the FTC Act.

While the Supreme Court settled an important issue in AMG, the law around FTC enforcement authority is in flux. Indeed, on the day before the decision, the FTC testified before Congress that “Section 13(b) is a critical tool in support of our enforcement missions, but its effectiveness is cur- rently imperiled [by AMG and further curtailments by circuit courts], and this uncertainty is hurting our ongoing enforcement efforts.” The Commission called for legislation, and a bill that would reverse the effect of AMG was introduced that same day in the House.

#### The plan derails it

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

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

#### Fraud crackdowns stop major terror attacks

Michael Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI), “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear war---cash is key

Dr. Peter J. Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University, “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### 7

ECA DA

#### The current ECA is vague and opened the floodgates to unprecedented challenges – BUT – electoral reform is coming now and *key* to reverse the trend and protect America’s declining democracy

Hesano 1/31 [Hesano, Devon, reporter and contributor, 1/31/2022. "An opening emerges to protect American elections." *The Michigan Daily*, Accessed: 2/2/2022. <https://www.michigandaily.com/opinion/columns/an-opening-emerges-to-protect-american-elections/>]

On Jan. 19, coming off a year of unprecedented attacks on the right to vote by Republican state legislatures throughout the country, congressional Democrats made their last-chance gambit and finally had a vote on carving out an exception for the filibuster for voting rights and election reform legislation. As had been telegraphed for months, the move failed, coming up two votes short of the 50-vote threshold needed. All 50 Senate Republicans were in opposition, joined by centrist Democrats Joe Manchin, D-W.Va., and Kyrsten Sinema, D-Ariz. It was a deflating end to a long and seemingly hopeless effort, capped off with intraparty fighting and a prevailing pessimistic mentality. It also left a choice for congressional Democratic leaders: fold over and move on, or go back to the drawing board in hopes of getting at least something passed to protect an imperiled democracy. Thankfully, it appears some in Congress are beginning to choose the latter. Seemingly just as the filibuster carveout vote failed, reports began to surface of an amplified bipartisan push to reform the Electoral Count Act, which lays out the procedure for counting Electoral College votes, along with the potential for increased funding for the facilitation of elections and measures to ensure the fair counting of votes. There has also been reporting that lawmakers are looking at ways to defend election workers, who had to endure an onslaught of dangerous rhetoric and physical threats of violence. The effort also seems to have real potential for success, with politicians on the ideological scale ranging from Sen. Chris Coons, D-Del. Chris Coons to House Minority Leader Kevin McCarthy R-Calif., who himself voted to overturn the election, expressing at least some sort of optimism and interest in a deal. **These are** all **policies that would make an important difference, and** would **address some of the most important problems facing** our **elections**. The potential to have wide-ranging bipartisan support for such an issue that has sadly turned so contentious is a unique opportunity and one that should gladly be seized. Unfortunately, some Democrats don’t view it as such. Some progressive Democrats have dismissed the effort, either as a distraction from the larger problem or insufficient to address the problems at hand. Sen. Raphael Warnock, D-Ga., when asked about the potential reform, stated, “They are not serious. And this is a diversion in order to prevent us from ensuring that every eligible American has the right to vote.” First, there does seem to be a serious effort at play, especially by senators like Susan Collins R-Maine, who has worked earnestly with Democrats in the past, on infrastructure for example. Second, if Democrats have an all-or-nothing attitude, in a 50–50 Senate, they are going to struggle to get things done for the remainder of this session in Congress. When dealing with the realities of a 50–50 Senate, a bare House majority and a Democratic senator from a state that voted for Trump by more than 35 points, compromise is inevitable and necessary. Additionally, Senate Majority Leader Chuck Schumer claimed the effort simply “says you can rig the elections anyway you want and then we’ll count it accurately.” This too, is the wrong approach. If all voter suppression, intimidation and barriers to the ballot suddenly evaporated, yet those counting and deeming the winner could simply throw out the results, turnout would be irrelevant. The reality is, though voter suppression and barriers to the ballot are real and dangerous, especially for minorities and the underserved, the larger threat to democracy is not actually solved by addressing voter suppression. For example, in the 2020 election, mail-in voting as a result of the pandemic made it easier than ever to vote. Turnout flourished, reaching numbers not seen since at least 1980. Yet, many would admit that the integrity of the election was under attack in ways not seen in the modern political era. **State and local**-level **Republicans** **made attempts to send fraudulent “alternate” electors** and prevent state election results from being certified, and **147** Republican **members of Congress even voted to throw out the will of** millions of **voters** in multiple states, even after the Jan. 6 insurrection had taken place. **This** is all **on top of the sustained push by** then-President **Trump** and his allies **to have** then–Vice President **Pence unilaterally reject slates of electors, a wildly anti-democratic course of action** that, thankfully, Pence did not pursue. If Pence had gone along with Trump, there is no clear telling what would have happened. As written, such a scenario is not explored within the Electoral Count Act, and it is worrisome to imagine how such an event would have unfolded. These threats, among many others, illustrate the most dangerous threats to American democracy. Though discussions are preliminary, there is evidence to suggest that the new bipartisan push would help to greatly thwart these problems. If an avenue is there, **as one appears to be**, congressional Democrats must take it and work to maximize the reforms that could be enacted. Moreover, none of this is to say voting rights cannot and should not be addressed whenever possible, as they clearly should. If Democrats manage to win at least two Senate seats in upcoming midterms, their voting rights and election reform bills will have a real chance of passing, so long as they can hold the House. But as the last few months have shown, that option is closed at the moment, and it would be irresponsible and dangerous not to take whatever electoral reform they can now, a sizable amount at that.

#### The plan is perceived by Republicans as democratic overstepping---that galvanizes serious republican pushback and overhaul of the laws

Browdie 21 et al [Megan Browdie is a Partner at The Cooley Law Firm Megan is recognized by Super Lawyers and LMG’s Expert Guides as a “Rising Star” in antitrust and by Who’s Who Legal as a “Future Leader.” Megan was also recognized by the American Bar Association as a Top 40 Young Lawyer, which recognizes lawyers who “exemplify a broad range of high achievement, innovation, vision, leadership, and legal and community service.” At Georgetown University Law Center, Megan was the executive notes editor of the Georgetown Journal of Legal Ethics and interned at the Bureau of Competition at the Federal Trade Commission. Georgetown University Law Center, JD, 2010 - “BIDEN/HARRIS EXPECTED TO DOUBLE DOWN ON ANTITRUST ENFORCEMENT: NO “TRUMP CARD” IN THE DECK” - Concurrences – #1 - Feb 15, 2021 - #E&F – modified for language that may offend - available at (scroll down): https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#abbott,]

VI. DRAMATIC ANTITRUST LEGISLATION UNLIKELY, THOUGH EXPECT SOME LEGISLATIVE MOVEMENT

34. Progressives in Congress are pushing a more aggressive antitrust enforcement agenda. As discussed above, the Subcommittee on Antitrust Law of the House Judiciary Committee recently issued a report calling for the antitrust laws to be updated. The Digital Competition Report proposed several reforms, including “[s]trengthening Section 7 of the Clayton Act, including through restoring presumptions and bright-line rules, restoring the incipiency standard and protection nascent competitors, and strengthening the law on vertical mergers.” The Committee also proposed “[s]trengthening Section 2 of the Sherman Act, including by introducing a prohibition on abuse of dominance and clarifying prohibitions on monopoly leveraging, predatory pricing, denial of essential facilities, refusals to deal, tying, and anticompetitive self-preferencing and product design.” [39]

35. Democrats have also been active on the Senate side. For example, Democratic Senator Klobuchar has also proposed legislation, the Anticompetitive Exclusionary Conduct Prevent Act, that, among other things, would amend the Clayton Act to prohibit “exclusionary conduct,” defined as conduct that “presents an appreciable risk of harming competition” and would create a presumption that conduct is exclusionary if undertaken by a company with a greater than 50% share in the relevant market. [40]

36. While House Republicans released a minority response largely supporting Democrats’ findings, they expressed concerns about sweeping solutions and instead advocated for refinements to current law. [41] For example, regarding nascent competition, the minority response to the Digital Competition Report explained that “Congress should look to reinvigorate the antitrust enforcement agencies’ ability to conduct proper oversight and bring enforcement cases based on potential competition doctrine. This may require legislation restoring the potential competition doctrine to its original Congressional intent while freeing it from its current overly restrictive standards.” The minority response also agreed that “[c]onservatives should consider supporting very limited legislative changes to provide consumers with a data portability standard that is similar to transferring cell phone numbers.”

37. There is also pending legislation introduced by Republicans that would more closely align FTC and DOJ processes (the SMARTER Act) and that would combine the agencies (the One Agency Act).

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect serious pushback to substantial overhauls of the system or laws.

#### US democratic leadership solves multiple existential threats

Kasparov 17 — Garry Kasparov, Chairman of the Human Rights Foundation, former World Chess Champion, 2017 (“Democracy and Human Rights: The Case for U.S. Leadership,” Testimony Before The Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues of the U.S. Senate Committee on Foreign Relations, February 16th, Available Online at https://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf, Accessed 07-13-2017)

The United States and the rest of the free world has an unprecedented advantage in economic and military strength today. What is lacking is the will. The will to make the case to the American people, the will to take risks and invest in the long-term security of the country, and the world. This will require investments in aid, in education, in security that allow countries to attain the stability their people so badly need. Such investment is far more moral and far cheaper than the cycle of terror, war, refugees, and military intervention that results when America leaves a vacuum of power. The best way to help refugees is to prevent them from becoming refugees in the first place. The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you.

## Solvency

### A2: 1AC Roach---No Thumper

#### Yes generic DAs---courts will block the FTC now, *only* the plan upholds it. GMU == Yellow

1AC Roach, 21

(Lee, for the Southern District of Florida and Partner at Faegre Drinker law, *The FTC Expands Section 5 Enforcement Efforts With Potentially Broad Implications*, accessed 9/3/21, <https://www.faegredrinker.com/en/insights/publications/2021/7/the-ftc-expands-section-5-enforcement-efforts-with-potentially-broad-implications>, RAW)

The Federal Trade Commission (FTC) recently updated its interpretation of its authority to challenge “unfair methods of competition” under Section 5 of the FTC Act. It will no longer limit enforcement actions under Section 5 to conduct that violates the consumer welfare standard. This may significantly expand the sorts of business activities the FTC investigates and challenges. Although this adjustment, in conjunction with other recent developments at the FTC, is widely interpreted to signal increased scrutiny of Big Tech companies, the FTC’s pivot on its Section 5 authority may have broader implications. Companies should monitor the FTC’s next steps closely for further insights on conduct it may challenge in the future. On July 1, the FTC voted to expand its enforcement efforts under Section 5 of the FTC Act. Section 5 authorizes the FTC to investigate and challenge “unfair methods of competition in or affecting commerce” (15 U.S.C. § 45(a)(1)) — language that is seemingly open-ended. Courts have not precisely defined the outer-bounds of the FTC’s Section 5 authority. Previously, according to a [2015 policy statement](https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf), the FTC was “guided by” the consumer welfare standard when using its Section 5 authority, and focused on whether the conduct in question artificially raised prices. This hewed closely to how courts have interpreted the other main federal antitrust statutes, the Sherman Act and the Clayton Act. In fact, in that same 2015 policy statement the FTC clarified that it would be “less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman Act or Clayton Act is sufficient to address the competitive harm arising from the act or practice.” And even where the Sherman Act or Clayton Act may not have prohibited certain conduct, the FTC’s record of enforcement has tended to focus on “incipient” conduct that could in the future lead to clear violations of those statutes, such as invitations to collude or exchanges of competitively sensitive information. The FTC’s move on July 1 constitutes a meaningful departure from its prior interpretation of Section 5, and signals that the FTC may now interpret “unfair methods of competition” more expansively than in the past. Indeed, in a [statement](https://www.ftc.gov/system/files/documents/public_statements/1591498/final_statement_of_chair_khan_joined_by_rc_and_rks_on_section_5_0.pdf) released in conjunction with the move, new FTC Chair Lina Khan stated that the 2015 policy statement “contravene[d] the text, structure, and history of Section 5 and largely wr[ote] the FTC’s standalone authority out of existence.” The move also harkens to previous advocacy by Chair Khan that the consumer welfare standard is an inadequate tool for challenging Big Tech companies. Importantly, however, nothing limits the FTC’s newly expansive understanding of its Section 5 authority only to Big Tech companies. In fact, prior statements by those commissioners who voted with Chair Khan to expand the FTC’s authority under Section 5 seem to indicate just the opposite. To take but one example, two years ago FTC Commissioner Rohit Chopra released a [statement](https://www.ftc.gov/system/files/documents/public_statements/1550127/192_3008_final_rc_statement_on_sunday_riley.pdf), joined by fellow Commissioner Rebecca Kelly Slaughter, criticizing an FTC settlement with online cosmetics company Sunday Riley Modern Skincare LLC. The company had posted false reviews of its products online in order to drive traffic. Commissioner Chopra argued this “false advertising [was] an unfair method of competition,” and thereby criticized the FTC’s action for failing to address the conduct as an antitrust violation and not simply a consumer protection violation. The FTC’s vote on July 1 opens the door to such an approach in future cases. All companies – not just Big Tech companies – will have to watch the FTC’s next steps carefully and determine how they might affect their own legal and business strategies. It will also be important to monitor how courts may respond to future challenges the FTC brings under its Section 5 authority, as courts may not necessarily agree with the FTC’s newly expansive view.

## Precision Ag Adv

### A2: Ag !---1NC

#### Food insecurity doesn’t cause war.

---no empirical data supports it

---food shortage is not the key internal link---it’s influenced by political structures, land, corruption and economic problems all of which the aff can’t solve or effect

Vestby et al 18, \*Jonas, Doctoral Researcher at the Peace Research Institute Oslo, \*\*Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and \*\*\*Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography. (5/18/18, “Does hunger cause conflict?”, *Climate & Conflict Blog*, <https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/>)

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

### A2: Ag I/L---1NC

#### China, EU, Russia, and India fill in to provide food

#### US supply isn’t key to global ag.

---most of American ag goes into fuel for cars and animals and US isn’t key because countries could get it from China or the EU

Charles 13, NPR’s food and agriculture correspondent. Citing Margaret Mellon, a scientist with the environmental advocacy group Union of Concerned Scientists. (Dan, 9/17/13, “American Farmers Say They Feed The World, But Do They?”, *NPR*, https://www.npr.org/sections/thesalt/2013/09/17/221376803/american-farmers-say-they-feed-the-world-but-do-they)

And this is why the words “feed the world” grate on the nerves of people who believe that large-scale, technology-driven agriculture is bad for the environment and often bad for people. Margaret Mellon, a scientist with the environmental advocacy group Union of Concerned Scientists, recently wrote an essay in which she confessed to developing an allergy to that phrase. “If there’s a controversy, the show-stopper is supposed to be, ‘We have to use pesticides, or we won’t be able to feed the world!’ “ she says. Mellon says it’s time to set that idea aside. It doesn’t answer the concerns that people have about modern agriculture — and it’s not even true. American-style farming doesn’t really grow food for hungry people, she says. Forty percent of the biggest crop — corn — goes into fuel for cars. Most of the second-biggest crop — soybeans — is fed to animals. Growing more grain isn’t the solution to hunger anyway, she says. If you’re really trying to solve that problem, there’s a long list of other steps that are much more important. “We need to empower women; we need to raise incomes; we need infrastructure in the developing world; we need the ability to get food to market without spoiling.”

#### Trade barriers thump – we’re yellow

Maxwell, Senior Expert, 19

(Mary Jane, at Washington Business Dynamics, March 6th, “U.S. farmers feed the world”, Share America, accessed 02/05/22, <https://share.america.gov/u-s-farmers-feed-world>) RES

American farmers are selling more of their high-quality products to the rest of the world than ever before in the history of U.S. agriculture. Secretary of State Mike Pompeo, speaking to farmers in Iowa on March 4 , said that U.S. farmers produce harvests “at levels the world would have been astounded by just a few years ago.” The United States, the world’s top food exporter, shipped over $139.5 billion in agricultural products abroad in 2018, a $1.5 billion increase over 2017. That’s good news for both American farmers and the nations who import high-quality, safe and reliable U.S. agricultural products and so can provide enough food for their entire populations. What America grows Anyone driving across the American Midwest — Illinois, Iowa, Nebraska and more — quickly learns that corn and soybeans are the most common crops grown in the United States and generate the highest agricultural export sales. Drive across the states of Kansas, North Dakota, Montana and Washington and wheat fields dominate the landscape. And visitors to Texas, Nebraska and Kansas see massive herds of cattle roaming these top three beef-producing states. “The U.S. agriculture sector is extremely diverse,” said Bryce Cooke, an economist with the U.S. Department of Agriculture. “The affordability and variety of the U.S. food supply reflects the productivity and diversity of the entire agricultural sector.” Agricultural exports support more than 1 million American jobs in farming and ranching, as well as jobs in processing, packaging and transporting the crops. Future of American farming By 2050 the world demand for food is expected to increase by 60 percent. To meet this challenge, the U.S. will devise new agricultural practices, build new markets and **remove** unfair trade barriers**. “**We also have the highest quality because of our free-market system,” Pompeo told the American farmers. “Companies value their brand in a market-based economy and work to protect that reputation. Competition and choice cause people to play by the rules.” “I am confident that the next billion, and the billion after that, of people who will be fed around the world will also be fed by American innovation, creativity and hard work,” Pompeo said.

### A2: Precision Ag---1NC

#### Precision ag is unsustainable.

---it results in more pesticide use and industrial ag which relies on speculative theories and trashes the previous decades of farming knowledge and makes no attempt to curb pollution – turns the adv

Ruiz-Marrero 02 (Carmelo Ruiz-Marrero, Fellow at the Society of Environmental Journalists and a Research Associate at the Institute for Social Ecology, “Precision Farming: Agribusiness Meets Spy Technology”, 10/2/02, http://www.councilforresponsiblegenetics.org/ViewPage.aspx?pageId=131)

Which corporations are involved? Joining forces to promote precision farming are farm equipment manufacturers like John Deere, agrochemical companies like Monsanto and DowElanco, pharmaceutical/biotech companies like Rhone-Poulenc, Novartis and AstraZeneca, as well as information brokering and data management firms. Not surprisingly, corporations with a long history of service to the military-industrial complex and intelligence agencies, like Rockwell and Lockheed Martin, are also jumping onto the precision farming bandwagon. For example, in a 1,000-acre potato farm, aerospace behemoth Lockheed Martin can place meteorological stations that measure 13 different weather parameters every 15 minutes and telemeter the data to a computer base station. "More than 430 gauges measure irrigation. Yield measurements are taken every three seconds during harvest. Crop quality samples are analyzed," boasts Lockheed's promotional material. What's more, "Soil is tested for 18 nutrient parameters. Microbialcommunities in the topsoil are studied."

The Downside

An interesting historical parallel comes to mind. Just as World War Two military contractors developed the chemicals and machinery that fueled the Green Revolution of the 1970's, precision farming is, to a large extent, an outgrowth of the space-age surveillance technologies used in the Cold War. The tight relationship between the military industries and industrial agriculture continues well into the twenty-first century. Some observers fear that these new technologies bode ill for sustainable agriculture and democratic governance, and could impose new forms of dependence on farmers. "Precision farming has less to do with mitigating agricultural pollution than with advancing industrial modes of production", according to social scientists Steven Wolf of the University of California, Berkeley and Fred Buttel of the University of Wisconsin. Action Group on Erosion, Technology and Concentration (ETC Group) Research Director Hope Shand agrees. "Precision farming is about commodification and control of information and it is among the high-tech tools that are driving the industrialization of agriculture, the loss of local farm knowledge and the erosion of farmers rights", she told CorpWatch. "With precision farming, farmers increasingly depend on off-farm decision making to determine precise levels of inputs. For example, dictating what seed, fertilizer, chemicals, row spacing, irrigation and harvesting techniques are used, and other management requirements," Shand explained. Precision farming seeks to legitimate and reinforce the uniformity and chemical-intensive requirements of industrial agriculture under the guise of protecting the environment and improving efficiency, according to Shand.

## 5G Adv

### Can’t Solve 5G---1NC

#### Can’t solve 5G---biggest hurdle is military use of midband, which aff can’t change

---they can’t solve the military being the only one allowed to use midband because the US military is not a private company so they wouldn’t meet T-private

1AC Marar, Senior Contributor, 21

(Satya, and Tech Policy Fellow, March 26th, “America Cannot Afford to Lose the Race Against China to 5G”, *The National Interest*, accessed 01/14/22, <https://nationalinterest.org/blog/buzz/america-cannot-afford-lose-race-against-china-5g-181185>)

Unlike China, the United States thankfully doesn’t need billions in taxpayer-funded state support to prop-up its telecommunications sector. The biggest hurdle **facing American companies** is the **military’s** monopolization of mid-band communication frequencies. These frequencies are ideal for 5G deployment and [extensively utilized](https://9to5mac.com/2021/03/03/why-5g-is-slow-in-the-us/) by China and other global players. Mid-band frequencies provide a balance between high-speed, cost-effectiveness, and network coverage, unlike the low and high-band frequencies to which American 5G development has mostly been restricted.

### 5G Strong---1NC

#### U.S. 5G innovation is high and globally dominant – big business is key.

---US has the 5 top tech giants in the world, China only has 3 in the top 20 and the rest of the top tech companies are all allied nations

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

### Cyber Defense---1NC

#### No cyber impact – attribution, restraint, and capabilities.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

### Warming Defense---1NC

Emissions from India, China, and Africa thump.

#### Climate change doesn’t cause extinction.

Kerr et al. ’19 [Amber, Daniel Swain, Andrew King, Peter Kalmus, Richard Betts, and William Huiskamp; June 4; Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub; Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research; Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne; Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab; Professor and Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change in Working Group 1; Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research; Climate Feedback, “Claim that human civilization could end in 30 years is speculative, not supported with evidence,” <https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/>]

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat” – they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

### Heg Defense---1NC

#### No impact to complete heg collapse.

Fettweis 18 Christopher J. Fettweis, Political Science Professor at Tulane University. [Psychology of a Superpower: Security and Dominance in US Foreign Policy, Columbia University Press]

How would the system respond? Could the New Peace survive without its policeman? Good counterfactual analysis minimizes the number of both assumptions and alterations of reality. It is also obviously wise to choose relatively simple cases, ones that do not involve many potentially confounding variables. 127 The ramifications of an actual supervolcanic blast would not be contained in the United States; the massive amount of material ejected into the atmosphere would blot out the sun and cause global temperatures to drop for years. To keep this thought experiment manageable, let us imagine a natural disaster that only affects the United States, one resulting in the effective disappearance of U.S. military and political engagement with the rest of the world. The effect of an aloof United States on some regions need not be imagined because it already exists. In South America, the U.S. Southern Command has a minuscule operating budget and no troops to speak of, despite its theoretical “responsibility” for the entire continent. The United States maintains no significant physical presence in Africa or large swaths of Asia. A Yellowstone supereruption would presumably not change security calculations in these areas much at all. Europe would be similarly unaffected, sat least in the short term. The United States currently maintains 95,000 troops from all services in its European Command, none of whom are tasked with maintaining the internal stability of its allies. During the Cold War, U.S. troops did not involve themselves in the domestic conflicts of their host states, unlike their Soviet counterparts. Their job was always to protect Europe from without, not within. The continent is the world’s most stable, its countries the most cooperative, and its people the least martial. It would probably take more than the removal of U.S. troops for ash-cleaning duties to bring back security dilemmas, arms races, and conflict. Borders have hardened, as have norms of conflict resolution. No one can know for sure, of course, but Europe does not seem to be a good candidate for chaos in the absence of the United States. Without the presence of U.S. forces, much of the Middle East would be unstable and chaotic. With the presence of U.S. forces, much of the Middle East is unstable and chaotic. A supervolcano erupting in Wyoming would not have much impact on the security of the world’s most dangerous region. Israel would be just as safe as it was before, since its marked military superiority over all potential rivals is the ultimate guarantor of its security, not U.S. troops or ships. Without the prospect of help from Uncle Sam, the failing governments of Iraq and Libya, as well as the rebels in Syria and our allies in Saudi Arabia, Yemen, Jordan, and elsewhere, would learn to become more self-sufficient. Perhaps they would even make long-term deals with their rivals. It might be good to throw them out of the U.S. nest and encourage them to fly on their own or crash. Fears of a resurgent Iran would be articulated by the usual suspects, no doubt, but both history and the realities of power suggest Tehran would find it hard to dominate its neighbors, even if it had the will to do so. The regions that would be of most concern in such a scenario would be the peripheries of those once and potentially future great powers, Russia and China. To believers in the “deterrence model,” first described by Robert Jervis four decades ago, weakness is provocative, and the post-U.S. world would seem everywhere weak. 128 Moscow and Beijing would attempt to expand their influence, and ultimately perhaps their borders, once they were assured that they would face no pushback from Washington. Perhaps gradual interference in their near-abroads, such as we have already seen in eastern Ukraine, northern Georgia, and the South China Sea, would occur with increasing frequency in the vacuum left by a U.S. withdrawal. While such expansion cannot be ruled out, especially in the long run, large border adjustments would probably not occur in the absence of U.S. power, for least two reasons. First, the removal of American troops would not alter the calculations regarding the costs and benefits of conquest in the twenty-first century. Although absorbing neighbors sometimes paid substantial dividends in the pre–information age, today territory is unrelated to wealth. 129 The people of larger states are not automatically better off than those of small ones. India is not richer than Singapore; Russia would not benefit from invading Ukraine; China would hardly be materially better off if it ruled Taiwan. The other members of the international system might not be able to stop such adventurism militarily, but they can certainly punish it economically. The costs related to invasion and the inevitable problems that arise during occupation would outweigh any possible benefits that may accrue. Conquest in a trading system is profoundly irrational, and the incentives for peace are strong. Rational calculations are not the only motivations for cross-border violence. As Norman Angell argued a century ago, people have to believe that war is not worth the cost before they will forswear it. 130 The quest for glory and prestige has sent many an army into motion over the centuries; Alfred Thayer Mahan responded to Angell’s rationalism a century ago by pointing out that “nations are under no illusion as to the unprofitableness of war itself” but honor often compels them to fight anyway. 131 By 2017, however, those calculations have changed. It is not at all clear that glory still automatically accompanies conquest. The second reason to believe that Russia and China might not dominate their near-abroads in an essentially U.S.-free world is that the behavioral norms of the New Peace discourage aggression. Imperialism invites opprobrium, not admiration. This does not mean that such assaults could not happen—Genghis Khan was unconcerned about opprobrium, for instance, and Vladimir Putin might be too—but surely it is significant that conquest has been all but absent since the Second World War. The unipole is not the only thing restraining potential combatants; both their material and reputational interests do so as well. If and when a catastrophic supervolcanic eruption weakens the United States, other countries would still have substantial interest in maintaining the overlapping network of international economic and political institutions that serve the interests of all members. All would want to see free trade and investment continue unmolested, whether or not the global policeman could punish violators. Most would continue to place some value on international law, human rights, and the UN system. Why any state would want to move backward to a mercantilist time of pure self-help and violence would be difficult to imagine. It is 2017, not 1717. Volcanologists assure us that someday Yellowstone will awaken with terrifying fury. The human and material cost will be immense, but the ramifications for international security may not be as dramatic. While it might take that kind of event to settle the questions concerning hegemonic-stability theory once and for all, we can still use our imaginations to anticipate the kind of reaction that the system would have if the global 911 is taken off the hook. Even more decisively than a Trump superpresidency, a supervolcano eruption would test the New Peace and settle forever debates over the importance of unipolarity. Until then, one can only imagine what the system would be like without the United States. And the smart money would be with those who say that it would probably look pretty much the same, with very small amounts of conflict and warfare, even if few people seem to notice. In the end, what can be definitely said about the relationship between U.S. power and international stability? Probably not much that will satisfy partisans. The pacifying virtue of U.S. hegemony will remain largely an article of faith in some circles in the policy world. Like most beliefs, it will resist alteration by logic and evidence. Beliefs rarely change, so debates rarely end. For those not yet fully converted, however, perhaps it will be significant that corroborating evidence for the relationship is extremely hard to identify. If indeed hegemonic stability exists, it does so without leaving much of a trace. Neither Washington’s spending, nor its interventions, nor its overall grand strategy seem to matter much to the levels of armed conflict around the world (apart from those wars that Uncle Sam starts). The empirical record does not contain much support for the notion that unipolarity and the New Peace are related. At the same time, three common psychological phenomena suggest that hegemonic stability is particularly susceptible to misperception. U.S. leaders probably exaggerate the degree to which their power matters. Researchers will need to look elsewhere to explain why the world has entered the most peaceful period in its history.

### A2: Grid---1NC

#### Grid is resilient to shocks.

Larson ‘18 Selena Larson, Cyber threat intelligence analyst at Dragos, Inc. [Threats to Electric Grid are Real; Widespread Blackouts are Not, 8-6-2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/]

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.