# 1NC – R3

### 1nc

#### Missing the plan text is a voter – sandbags the negative block on a new aff – guts clash and ability to innovate new responses to affirmatives

### 1nc – T

#### Interpretation

#### Increase means to make something greater than it exists as currently – it adds to what is pre-existing

Buckley 06 (Jeremiah, Legal Counsel. Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”).

Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Prohibition is a law or order forbidding an action –

Oxford Languages Dictionary No Date (https://languages.oup.com/google-dictionary-en/)

Prohibition n. forbidding an act or activity. A court order forbidding an act is a writ of prohibition, an injunction, or a writ of mandate (mandamus) if against a public official.

#### Anti-competitive business practices are those practices that do harm to businesses or consumers – the affirmative had to add something to the list

Gibbs Law Group No Date (Anticompetitive Practices. https://www.classlawgroup.com/antitrust/unlawful-practices/)

Federal and state antitrust laws prohibit anticompetitive behavior and unfair business practices that harm other businesses and consumers.

Examples of these unlawful, anticompetitive practices include:

Price Fixing – an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.

Pay-for-Delay – an agreement between a brand drug manufacturer and a would-be generic competitor to delay the release of a generic version of the branded drug, depriving consumers of lower-priced generics.

Bid-Rigging – competitors agree in advance who will submit the winning bid during a competitive bidding process. As with price fixing, it is not necessary that all bidders participate in the conspiracy.

Monopolization – one or more persons or companies totally dominates an economic market.

Unfair Competition – an attempt to gain unfair competitive advantage through false, fraudulent, or unethical commercial conduct.

Market Division – an agreement between competitors not to compete within each other’s geographic territories.

Group Boycotts – two or more competitors agree not to do business with a specific person or company.

Exclusive Dealing Arrangements – an agreement that a buyer will only buy exclusively from the supplier.

Price Discrimination – charging different prices to similarly situated buyers. Certain types of price discrimination may be illegal under the Robinson-Patman Act.

Tying – when a company makes the purchase of an item conditioned on buying a second item.

#### Violation – The rez requires the affirmative to substantively add to antitrust law, not just broaden enforcement of whats already on the books - Plan just applies existing antitrust law to shipping– that doesn’t increase prohibitions or expand the scope of core antitrust law because it only applies to the shipping industry

#### Reasons to Prefer and Vote Negative

#### Limits – This topic is already and the deal the death blow to negative research burden – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each debate, enforcing existing law to cover new situations—shipping is the worst example of limits explosion

#### Ground – The aff decimates our ground – they take away the floor for what the affirmative has to do which is increase prohibitions Lose all politics, agency, innovation and other core topic links. We also lose any enforcements CPs which should be core negative ground

#### Vote neg

### 1nc- DA

FTC

#### The FTC has shifted from tech mergers to overconsolidation in gas—cartels in gas destroy the energy sector

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

For the energy sector, one silver lining of the increasingly aggressive rhetoric from antitrust regulators has been their singular focus on “big tech.” It seemed, for a time, that oil & gas had finally abdicated its long-held position as the industry most likely to be on the receiving end of heightened antitrust scrutiny. Any such hope evaporated last week, when Lina Khan, the new chair of the Federal Trade Commission, sent a letter to the White House, making clear that she has the energy industry squarely within her sights. This renewed focus on the energy industry comes at an already sensitive time. If gas prices rise in the wake of Ida, there will be loud calls for an investigation, as was the case after Hurricanes Katrina and Rita in 2005. Similar to those storms, Ida amounted to a direct hit on the industry, barreling through the Gulf Coast and Louisiana, leaving more than 1 million without power. While it remains to be seen what will ultimately happen with fuel prices, there were already calls for an investigation after prices rose through the summer, even before the hurricane was on the horizon. I. Ms. Khan’s Letter The letter, sent on August 25, came in response to a request from Brian Deese, Director of the National Economic Council, for the FTC to investigate elevated gas prices. In his August 11 letter, Deese noted, “During this summer driving season, there have been divergences between oil prices and the cost of gasoline at the pump.” He asked the FTC to investigate. Khan’s response went far beyond Deese’s straightforward request, outlining a three-part enforcement plan, tightly focused on the energy industry. First, Khan stated, she plans to “identify additional legal theories” to challenge retail fuel station mergers “where dominant players are buying up family-run businesses.” This remarkably specific initiative, possibly untethered to traditional concerns about customer impacts, could mean longer and less predictable reviews for deals involving the sale of independent gas stations. Second, Khan indicated she would be “taking steps to deter unlawful mergers in the oil and gas industry.” While she again made clear that she is focused on retail fuel deals, she clearly left the door open for a broader industry focus. Specifically, Khan referred to a July decision to rescind a prior FTC policy that limited requirements for parties to any merger ultimately deemed unlawful to obtain prior approval from the agency for any future transactions. In her letter from last week, Khan stated: “we will impose ‘prior approval’ requirements to deter those who propose illegal mergers, including in retail gas markets.” Finally, Khan wrote that she “will be asking our staff to investigate abuses in the franchise market.” She hypothesized that “large national chains” might be forcing their “franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” Khan then signed off, stating, “I will continue to assess how the FTC can use its tools to police unlawful business practices in oil and gas markets.” All of this adds up to a notably focused promise to create new hurdles for proposed transactions in the energy industry and to find new reasons to investigate a variety of conduct. II. Pricing Investigations Whether triggered by Hurricane Ida or by letters from concerned officials such as Mr. Deese, any FTC gas pricing investigation would bring significant discovery burdens for industry participants. The post-Katrina report, released in May 2006, explained: “Since August 2005, the Commission has expended substantial resources on this investigation, including the full-time commitment of a significant number of attorneys, economists, financial analysts, paralegals, research analysts, and other support personnel with specialized expertise in the petroleum industry.” Specifically, FTC staff conducted 65 interviews, issued 139 Civil Investigative Demands (similar to subpoenas), and 99 orders seeking profitability and tax expenditure information. Staff identified more than 105 retailers accused of price gouging. Despite the deep dive, the Commission uncovered very little evidence of wrongdoing. While finding that seven refiners, two wholesalers, and 24 single-location retailers had higher average gasoline prices that were not substantially attributable to higher costs during the relevant period, the report ultimately concluded: “additional analysis…showed that other factors, such as regional or local market trends, appeared to explain the pricing of these firms in nearly all cases.” This prior failure to find illegal conduct is unlikely to dissuade the current slate of enforcers from pursuing a similar investigation. Aggressive antitrust enforcement has rapidly become a central cause of the current administration. Biden’s antitrust appointees, including Khan, are clearly intent on implementing an elevated level of antitrust scrutiny.

#### Antitrust saps FTC resources –plan causes case cutting

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

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

#### US consolidation of energy causes extinction

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

The United States should work toward a global energy system that is characterized by the reduction of excessive price volatility on global energy markets and the minimization of the impact of geopolitical upheavals. This requires the introduction of more competition, transparency, liquidity, better rules and regulations for energy trade, and the stabilization of global energy trading routes in concert with other key stakeholders. The liberalized global energy trade would be coupled with transparent and efficiently functioning global and regional markets. This necessitates energy market integration and interconnections in Europe, Asia, Africa, and Latin America alike to enhance regional synergies and create markets. This integration process should be supported by US experience and technical assistance. It is of utmost importance to ensure that competition is not distorted, with special regard to cartelization in the regional and global gas markets. The United States should promote global principles for competition in the energy markets to reduce the risk of cartelization and price setting, cripple the disruptive ability of irresponsible players on the market, enhance security of supplies, and promote open and efficiently functioning markets. Monitoring the implementation of global and regional climate agreements; promoting dialogue and cooperation between consumer and producer countries; introducing and enhancing dispute resolution mechanisms; increasing transparency and reducing volatility on the international energy markets; and devising international standards of physical and cyber energy infrastructure protection will be at the center of the US international energy governance agenda. Therefore, international institutions that serve US national interests need to be strengthened further with special regard to the International Energy Agency (IEA), the United Nations Sustainable Energy for All Initiative (SE4All,) the International Renewable Energy Agency (IRENA), and the Energy Charter Treaty. In particular, the IEA’s mandate, organization, and budget should be reinforced to allow the organization to conduct a global energy dialogue with all key stakeholders, and to play a robust role in facilitating the exchange of best practices in green technology deployment, energy efficiency, and other key issues in the context of the Paris Climate Agreement. As the energy sector undergoes a fundamental transformation, new global actors emerge and play a decisive role in how to produce and consume energy and control the climate. The new ‘lateral energy regime’ vastly widens the circle of interested and invested actors and influencers.58 This new paradigm requires a fundamentally different approach to governance on all levels: local, national, and international. The United States should invest in the empowerment and inclusion of constructive new actors to co-govern the energy space, while depowering spoiler actors, such as terrorist organizations that target energy infrastructure. Designing a new model for public-private-people-partnerships (PPPP) is essential to managing the complex interplay between the traditional and new producers, transporters, and consumers of energy—municipal and regional governments and civil society actors. Conclusion The first of the Atlantic Council Strategy Paper Series, Dynamic Stability: US Strategy for a World in Transition, identified the protection of global commons by the United States as critically important for both material and moral reasons. It rightly argued that “it is important to include climate in the definition of global commons.”59 That paper defined ‘dynamic stability’ as the key conceptual framework to deal with a fast-changing ‘Westphalian-Plus’ world and argued for “harnessing change to preserve the liberal international order.”60 Harnessing change in the energy sector expeditiously is an existential issue for all humanity. Dynamic stability in the US energy sector would mean leveraging the unique natural bounty and technological prowess of the United States and using the very momentum created by the unconventional hydrocarbon revolution to gradually pivot away from fossil fuels. Leaving the current system unreformed and unmodernized will threaten the security and well-being of American citizens, hurt the US economy at home, and isolate the United States internationally. By compromising on market-friendly public policy measures and leveraging the low oil price environment, the United States can introduce the right incentives into the energy system to shepherd an accelerated energy transition into a more modern, low-carbon energy era that still relies heavily on natural gas—particularly during the transition—and nuclear power to provide baseload generation and counter seasonal intermittency.

### 1nc—DA

BizCon

#### Plan creates an abrupt shift and doctrinal instability in antitrust that spills over throughout the economy—it’s impossible to distinguish specific industries because it’s enforced in generalist common law which dries up capital flows

Rogerson 20 (William, Professor of Economics at Northwestern University, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020)

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20 The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself. A. Case-by-Case, Fact-Specific Approach Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen. B. Slow, Usually Predictable Doctrinal Development A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26 Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts. C. Market-Driven Case Selection In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development. [\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below. D. Generalists versus Industry Experts Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39 As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges. E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics. [\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42 The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction. However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement. The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary. The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Overall growth is decked by the aff and unpredictable shifts ruin business confidence

Cambon 21 (Sarah Chaney Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800)

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery. Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook. Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak. Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show. “Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.” Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic. Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists. Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence. The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’” Businesses appear to be less risk-averse now, he said. After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital. Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit. Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first. “We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities. Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

#### Economic decline causes nuclear war

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

Various scholars and institutions regard global social instability as the greatest threat facing this decade. The catalyst has been postulated to be a Second Great Depression which, in turn, will have profound implications for global security and national integrity. This paper, written from a broad systems perspective, illustrates how emerging risks are getting more complex and intertwined; blurring boundaries between the economic, environmental, geopolitical, societal and technological taxonomy used by the World Economic Forum for its annual global risk forecasts. Tight couplings in our global systems have also enabled risks accrued in one area to snowball into a full-blown crisis elsewhere. The COVID-19 pandemic and its socioeconomic fallouts exemplify this systemic chain-reaction. Onceinexorable forces of globalization are rupturing as the current global system can no longer be sustained due to poor governance and runaway wealth fractionation. The coronavirus pandemic is also enabling Big Tech to expropriate the levers of governments and mass communications worldwide. This paper concludes by highlighting how this development poses a dilemma for security professionals. Key Words: Global Systems, Emergence, VUCA, COVID-9, Social Instability, Big Tech, Great Reset INTRODUCTION The new decade is witnessing rising volatility across global systems. Pick any random “system” today and chart out its trajectory: Are our education systems becoming more robust and affordable? What about food security? Are our healthcare systems improving? Are our pension systems sound? Wherever one looks, there are dark clouds gathering on a global horizon marked by volatility, uncertainty, complexity and ambiguity (VUCA). But what exactly is a global system? Our planet itself is an autonomous and selfsustaining mega-system, marked by periodic cycles and elemental vagaries. Human activities within however are not system isolates as our banking, utility, farming, healthcare and retail sectors etc. are increasingly entwined. Risks accrued in one system may cascade into an unforeseen crisis within and/or without (Choo, Smith & McCusker, 2007). Scholars call this phenomenon “emergence”; one where the behaviour of intersecting systems is determined by complex and largely invisible interactions at the substratum (Goldstein, 1999; Holland, 1998). The ongoing COVID-19 pandemic is a case in point. While experts remain divided over the source and morphology of the virus, the contagion has ramified into a global health crisis and supply chain nightmare. It is also tilting the geopolitical balance. China is the largest exporter of intermediate products, and had generated nearly 20% of global imports in 2015 alone (Cousin, 2020). The pharmaceutical sector is particularly vulnerable. Nearly “85% of medicines in the U.S. strategic national stockpile” sources components from China (Owens, 2020). An initial run on respiratory masks has now been eclipsed by rowdy queues at supermarkets and the bankruptcy of small businesses. The entire global population – save for major pockets such as Sweden, Belarus, Taiwan and Japan – have been subjected to cyclical lockdowns and quarantines. Never before in history have humans faced such a systemic, borderless calamity. COVID-19 represents a classic emergent crisis that necessitates real-time response and adaptivity in a real-time world, particularly since the global Just-in-Time (JIT) production and delivery system serves as both an enabler and vector for transboundary risks. From a systems thinking perspective, emerging risk management should therefore address a whole spectrum of activity across the economic, environmental, geopolitical, societal and technological (EEGST) taxonomy. Every emerging threat can be slotted into this taxonomy – a reason why it is used by the World Economic Forum (WEF) for its annual global risk exercises (Maavak, 2019a). As traditional forces of globalization unravel, security professionals should take cognizance of emerging threats through a systems thinking approach. METHODOLOGY An EEGST sectional breakdown was adopted to illustrate a sampling of extreme risks facing the world for the 2020-2030 decade. The transcendental quality of emerging risks, as outlined on Figure 1, below, was primarily informed by the following pillars of systems thinking (Rickards, 2020): • Diminishing diversity (or increasing homogeneity) of actors in the global system (Boli & Thomas, 1997; Meyer, 2000; Young et al, 2006); • Interconnections in the global system (Homer-Dixon et al, 2015; Lee & Preston, 2012); • Interactions of actors, events and components in the global system (Buldyrev et al, 2010; Bashan et al, 2013; Homer-Dixon et al, 2015); and • Adaptive qualities in particular systems (Bodin & Norberg, 2005; Scheffer et al, 2012) Since scholastic material on this topic remains somewhat inchoate, this paper buttresses many of its contentions through secondary (i.e. news/institutional) sources. ECONOMY According to Professor Stanislaw Drozdz (2018) of the Polish Academy of Sciences, “a global financial crash of a previously unprecedented scale is highly probable” by the mid- 2020s. This will lead to a trickle-down meltdown, impacting all areas of human activity. The economist John Mauldin (2018) similarly warns that the “2020s might be the worst decade in US history” and may lead to a Second Great Depression. Other forecasts are equally alarming. According to the International Institute of Finance, global debt may have surpassed $255 trillion by 2020 (IIF, 2019). Yet another study revealed that global debts and liabilities amounted to a staggering $2.5 quadrillion (Ausman, 2018). The reader should note that these figures were tabulated before the COVID-19 outbreak. The IMF singles out widening income inequality as the trigger for the next Great Depression (Georgieva, 2020). The wealthiest 1% now own more than twice as much wealth as 6.9 billion people (Coffey et al, 2020) and this chasm is widening with each passing month. COVID-19 had, in fact, boosted global billionaire wealth to an unprecedented $10.2 trillion by July 2020 (UBS-PWC, 2020). Global GDP, worth $88 trillion in 2019, may have contracted by 5.2% in 2020 (World Bank, 2020). As the Greek historian Plutarch warned in the 1st century AD: “An imbalance between rich and poor is the oldest and most fatal ailment of all republics” (Mauldin, 2014). The stability of a society, as Aristotle argued even earlier, depends on a robust middle element or middle class. At the rate the global middle class is facing catastrophic debt and unemployment levels, widespread social disaffection may morph into outright anarchy (Maavak, 2012; DCDC, 2007). Economic stressors, in transcendent VUCA fashion, may also induce radical geopolitical realignments. Bullions now carry more weight than NATO’s security guarantees in Eastern Europe. After Poland repatriated 100 tons of gold from the Bank of England in 2019, Slovakia, Serbia and Hungary quickly followed suit. According to former Slovak Premier Robert Fico, this erosion in regional trust was based on historical precedents – in particular the 1938 Munich Agreement which ceded Czechoslovakia’s Sudetenland to Nazi Germany. As Fico reiterated (Dudik & Tomek, 2019): “You can hardly trust even the closest allies after the Munich Agreement… I guarantee that if something happens, we won’t see a single gram of this (offshore-held) gold. Let’s do it (repatriation) as quickly as possible.” (Parenthesis added by author). President Aleksandar Vucic of Serbia (a non-NATO nation) justified his central bank’s gold-repatriation program by hinting at economic headwinds ahead: “We see in which direction the crisis in the world is moving” (Dudik & Tomek, 2019). Indeed, with two global Titanics – the United States and China – set on a collision course with a quadrillions-denominated iceberg in the middle, and a viral outbreak on its tip, the seismic ripples will be felt far, wide and for a considerable period. A reality check is nonetheless needed here: Can additional bullions realistically circumvallate the economies of 80 million plus peoples in these Eastern European nations, worth a collective $1.8 trillion by purchasing power parity? Gold however is a potent psychological symbol as it represents national sovereignty and economic reassurance in a potentially hyperinflationary world. The portents are clear: The current global economic system will be weakened by rising nationalism and autarkic demands. Much uncertainty remains ahead. Mauldin (2018) proposes the introduction of Old Testament-style debt jubilees to facilitate gradual national recoveries. The World Economic Forum, on the other hand, has long proposed a “Great Reset” by 2030; a socialist utopia where “you’ll own nothing and you’ll be happy” (WEF, 2016). In the final analysis, COVID-19 is not the root cause of the current global economic turmoil; it is merely an accelerant to a burning house of cards that was left smouldering since the 2008 Great Recession (Maavak, 2020a). We also see how the four main pillars of systems thinking (diversity, interconnectivity, interactivity and “adaptivity”) form the mise en scene in a VUCA decade. ENVIRONMENTAL What happens to the environment when our economies implode? Think of a debt-laden workforce at sensitive nuclear and chemical plants, along with a concomitant surge in industrial accidents? Economic stressors, workforce demoralization and rampant profiteering – rather than manmade climate change – arguably pose the biggest threats to the environment. In a WEF report, Buehler et al (2017) made the following pre-COVID-19 observation: The ILO estimates that the annual cost to the global economy from accidents and work-related diseases alone is a staggering $3 trillion. Moreover, a recent report suggests the world’s 3.2 billion workers are increasingly unwell, with the vast majority facing significant economic insecurity: 77% work in part-time, temporary, “vulnerable” or unpaid jobs. Shouldn’t this phenomenon be better categorized as a societal or economic risk rather than an environmental one? In line with the systems thinking approach, however, global risks can no longer be boxed into a taxonomical silo. Frazzled workforces may precipitate another Bhopal (1984), Chernobyl (1986), Deepwater Horizon (2010) or Flint water crisis (2014). These disasters were notably not the result of manmade climate change. Neither was the Fukushima nuclear disaster (2011) nor the Indian Ocean tsunami (2004). Indeed, the combustion of a long-overlooked cargo of 2,750 tonnes of ammonium nitrate had nearly levelled the city of Beirut, Lebanon, on Aug 4 2020. The explosion left 204 dead; 7,500 injured; US$15 billion in property damages; and an estimated 300,000 people homeless (Urbina, 2020). The environmental costs have yet to be adequately tabulated. Environmental disasters are more attributable to Black Swan events, systems breakdowns and corporate greed rather than to mundane human activity. Our JIT world aggravates the cascading potential of risks (Korowicz, 2012). Production and delivery delays, caused by the COVID-19 outbreak, will eventually require industrial overcompensation. This will further stress senior executives, workers, machines and a variety of computerized systems. The trickle-down effects will likely include substandard products, contaminated food and a general lowering in health and safety standards (Maavak, 2019a). Unpaid or demoralized sanitation workers may also resort to indiscriminate waste dumping. Many cities across the United States (and elsewhere in the world) are no longer recycling wastes due to prohibitive costs in the global corona-economy (Liacko, 2021). Even in good times, strict protocols on waste disposals were routinely ignored. While Sweden championed the global climate change narrative, its clothing flagship H&M was busy covering up toxic effluences disgorged by vendors along the Citarum River in Java, Indonesia. As a result, countless children among 14 million Indonesians straddling the “world’s most polluted river” began to suffer from dermatitis, intestinal problems, developmental disorders, renal failure, chronic bronchitis and cancer (DW, 2020). It is also in cauldrons like the Citarum River where pathogens may mutate with emergent ramifications. On an equally alarming note, depressed economic conditions have traditionally provided a waste disposal boon for organized crime elements. Throughout 1980s, the Calabriabased ‘Ndrangheta mafia – in collusion with governments in Europe and North America – began to dump radioactive wastes along the coast of Somalia. Reeling from pollution and revenue loss, Somali fisherman eventually resorted to mass piracy (Knaup, 2008). The coast of Somalia is now a maritime hotspot, and exemplifies an entwined form of economic-environmental-geopolitical-societal emergence. In a VUCA world, indiscriminate waste dumping can unexpectedly morph into a Black Hawk Down incident. The laws of unintended consequences are governed by actors, interconnections, interactions and adaptations in a system under study – as outlined in the methodology section. Environmentally-devastating industrial sabotages – whether by disgruntled workers, industrial competitors, ideological maniacs or terrorist groups – cannot be discounted in a VUCA world. Immiserated societies, in stark defiance of climate change diktats, may resort to dirty coal plants and wood stoves for survival. Interlinked ecosystems, particularly water resources, may be hijacked by nationalist sentiments. The environmental fallouts of critical infrastructure (CI) breakdowns loom like a Sword of Damocles over this decade. GEOPOLITICAL The primary catalyst behind WWII was the Great Depression. Since history often repeats itself, expect familiar bogeymen to reappear in societies roiling with impoverishment and ideological clefts. Anti-Semitism – a societal risk on its own – may reach alarming proportions in the West (Reuters, 2019), possibly forcing Israel to undertake reprisal operations inside allied nations. If that happens, how will affected nations react? Will security resources be reallocated to protect certain minorities (or the Top 1%) while larger segments of society are exposed to restive forces? Balloon effects like these present a classic VUCA problematic. Contemporary geopolitical risks include a possible Iran-Israel war; US-China military confrontation over Taiwan or the South China Sea; North Korean proliferation of nuclear and missile technologies; an India-Pakistan nuclear war; an Iranian closure of the Straits of Hormuz; fundamentalist-driven implosion in the Islamic world; or a nuclear confrontation between NATO and Russia. Fears that the Jan 3 2020 assassination of Iranian Maj. Gen. Qasem Soleimani might lead to WWIII were grossly overblown. From a systems perspective, the killing of Soleimani did not fundamentally change the actor-interconnection-interaction adaptivity equation in the Middle East. Soleimani was simply a cog who got replaced.

### 1nc- CP

#### The USFG should establish positive incentives that encourage competitive business practices in the area of tacit collusion.

#### This solves best – it establishes a culture of compliance that aligning corporate interests with public good

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

I believe that – in order to reach its objective of increasing welfare – effective competition policy should place more focus on preventing anticompetitive conduct. Traditional thinking of bringing about avoidance of anticompetitive conduct has emphasised deterrence through negative incentives, such as the threat of penalties. Regimes adopt administrative corporate fines and – depending on the jurisdiction – criminal sanctions, combined with related enforcement by the national competition authority (NCA). Fines intend to neutralise negative externalities by forcing the infringer to internalise the related cost. This is a good principle, but not fully useful as long as detection rates of anticompetitive conduct are only partial. Moreover, as Riley & Sokol argue, fines do not truly address the morality of a competition infringement, but mainly just assign a price to be paid for noncompliance.51 The argument of fines acting as compensation of sorts for certain (unwanted) conduct finds backing in empirical research.52 Also, fines exert a negative externality of their own – in the form of collateral damage to those of the fined firm’s employees that were uninvolved in the infringement. Policymakers and enforcers should be more focused on how to discourage and prevent anticompetitive conduct, instead of merely relying on assumed deterrence through ex post enforcement and fining. The objective of competition law is arguably not to levy fines just for the sake of it. Being open-minded about additional measures in which prevention efficacy can be increased bears inherent societal value. Geradin states that increasing fines is not a good way of further improving deterrence and that an alternative way would instead be to emphasise compliance programs.53 Further, Riley & Sokol suggest that effective competition enforcement should be more about “changing normative values within organizations” than merely fining, a goal which however requires creativity from policymakers.54 Inter alia, former EU Commissioner Almunía has emphasised the importance of fostering a culture of competition compliance and that the objective is that there would be no need for fining at all.55 Thus, there appears to be a demand for improvement. Also, the European Parliament has stated that firm conduct is ‘motivated not only by penalties but also by encouraging compliance’ and that effective competition policy should encourage compliance, while also being an effective deterrent.56 Governance theory points to a shift in general public governance towards so-called co-governance or interactive governance where other actors in society are given a more pronounced role, as opposed to more hierarchical, state-driven governance.57 There are wide-ranging policy choices made under this umbrella, starting with privatisation and deregulation, some of which link to neoliberal thought.58 Other examples are linked to the idea of responsive regulation, where authorities begin with a persuasive and collaborative approach and escalate towards more unilateral and punitive measures only where needed.59 However, concurrently and irrespectively, co-governance presents a framework in which competition policy could question whether the main actors in competitive markets – firms – could play a greater role also in furtherance of competition enforcement than thus far. Given the statutory profit-seeking purpose of firms worldwide, positive incentives could be beneficial in enabling them to better act as partners of government – and for their part ensuring that markets remain competitive. The International Chamber of Commerce (ICC) has conducted a comparative study on how competition compliance is encouraged by certain key NCAs60. It concludes that a common feature of sophisticated antitrust jurisdictions is the use of multiple tools to influence corporate competition compliance.61 Several key jurisdictions offer guidance as to recommend features for a compliance program and some authorities even offer certifications for programs that meet their criteria.62 This is a form of government nudging. All in all, the study shows that competition authorities acknowledge that compliance programs can be helpful in improving compliance. What is largely lacking, however, are real incentives for truly encouraging it in a preventive fashion. Firms are primarily motivated to comply with competition law based on the risk associated with non-compliance, based on an OECD study.63 This risk likely consists both a risk of sanctions as well as of a loss of reputation, i.e. negative consequences as a whole. This is natural, given that negative incentives are the main tool using which competition policy objectives are implemented. What could be interesting is to understand how different the result may have been in a system that has instituted supplementary positive incentives. At the firm level, competition compliance often ties in with other compliance efforts.64 However, resourcing is not necessarily on equal footing, given that other areas requiring regulatory compliance may offer better incentives to encourage such efforts.65 Wils discusses this question and comes to the conclusion that other regulatory areas are misguided by offering firms positive incentives to encourage certain conduct.66 Whether this is the case, the point remains that by incentivising ex ante efforts towards competition compliance less, risk exists of resulting less effort and, thus, likely more anticompetitive conduct. Root argues that current policy approaches result in a regime of “piecemeal compliance” that lacks coordination and thereby loses enforcement potential.67 Greater policy coherence would surely benefit firms in helping guide compliance efforts. Infringement is a result of both a lack of awareness and deliberate conduct. Key causes for noncompliance were the (perceived or actual) lack of commitment within management of the firm, based on a study conducted by the then-UK Office of Fair Trading.68 Certainly, some breaches are deliberately mandated by top management. However, this is not the case for all. It is argued that competition law breaches also occur due to organisational failure rather than top management’s profit seeking.69 In such cases, lack of awareness may well play a role. In other cases, harmful internal social norms may actually contribute towards non-compliance. This might particularly be the case when management prioritises profit-making at the expense of other considerations, such as societal values and morality. Individuals might receive rewards for reaching targets that inherently may require anticompetitive behaviour to reach.70 Further, it is noteworthy that psychological research shows that leadership which emphasises and promotes ethical conduct is able to shape an organisation’s conduct as a whole.71 Leniency programs are currently the primary ‘carrot’ in the toolbox of NCAs. However, leniency programs do not prevent cartels and other competition restrictions – they merely facilitate enforcement and detection of already-occurred conduct. A study conducted by Bigoni et al. has shown that although leniency does increase deterrence, it also stabilises existing cartels, and that while leniency might increase the volume of detected cartels, appropriate rewards are likely to be still more effective in improving prevention of anticompetitive conduct.72 Further, it has also been suspected that cartels revealed through leniency applications are often likely past their peak and making only limited profits at such time.73 One could even argue that in light of what has been mentioned above, leniency is too generous in relation to its benefits. This argument gains traction when put into perspective – few NCAs have other substantial rewards that aim at steering corporate conduct. Rewards promised by policymakers need to be relevant enough to be discussed in the corporate boardroom. Measures taken by firms have the potential to trickle down within the organisation, raise awareness, and contribute to creating a culture of compliance, as alluded to in Section 2. The aggregate impact of these cumulative effects can easily be underestimated. While it is challenging to quantify exactly, they should – in any case – help improve the preventive impact of current competition policy in deterring anticompetitive misconduct from occurring. There has been surprisingly limited focus by NCAs and policymakers on how positive incentives could be used in the context of fulfilling the goals of competition policy. A notable exception is the near-universal protection of intellectual property – a clear reward for prospective authors and inventors in exchange for their innovative efforts. There are a number of concrete proposals for positive incentives in the context of competition compliance that could help with preventing anticompetitive conduct. The following subsections will discuss two specific avenues where the author finds rewards to be particularly worthy of consideration. They are not the only ones.74 The purpose of the following examples is to both illustrate the potential of positive incentives through concrete examples, as well as bring forward actual proposals.

### 1nc- K

#### Capitalism controls all the impacts

Foster 19 [John, Prof of Sociology at the Univ of Oregon, “Capitalism Has Failed – What Next?” Monthly Review, 02/01/19, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, accessed 08/22/21, JCR]

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war. To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3 Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7 The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13 Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15 In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18 At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21 More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet. Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23 The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers. Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27 War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29 Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30 More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35 The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38 If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40 Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity. Capitalism is best understood as a competitive class-based mode of production and exchange geared to the accumulation of capital through the exploitation of workers’ labor power and the private appropriation of surplus value (value generated beyond the costs of the workers’ own reproduction). The mode of economic accounting intrinsic to capitalism designates as a value-generating good or service anything that passes through the market and therefore produces income. It follows that the greater part of the social and environmental costs of production outside the market are excluded in this form of valuation and are treated as mere negative “externalities,” unrelated to the capitalist economy itself—whether in terms of the shortening and degradation of human life or the destruction of the natural environment. As environmental economist K. William Kapp stated, “capitalism must be regarded as an economy of unpaid costs.”42 We have now reached a point in the twenty-first century in which the externalities of this irrational system, such as the costs of war, the depletion of natural resources, the waste of human lives, and the disruption of the planetary environment, now far exceed any future economic benefits that capitalism offers to society as a whole. The accumulation of capital and the amassing of wealth are increasingly occurring at the expense of an irrevocable rift in the social and environmental conditions governing human life on earth.43

#### Antitrust is the foundation of neoliberal institution formation – it re-organizes global political space around the fiction of “the market.”

Türem 16 [Z. Umut, Assoc Prof at the Ataturk Institute for Modern Turkish History at Bogazici Univ, “‘The market’ unbound: neoliberalism, competition laws and post territoriality,” *Journal of International Relations and Development* 19.2, proquest, JCR]

The post-1980 worldwide market reforms have created a massive wave of legal production. Competition and antitrust legislation -- as well as agencies to oversee such laws -- have been among the most important vestiges of this wave of neoliberal institutional formation. Today, over 100 countries have competition laws to regulate markets, the vast majority of which have been passed since 1980 -- many, notably, after the dissolution of the Soviet Union (Gerber 2010: 79).2 Not only have laws been passed in innumerable national contexts, but new economic techniques such as 'market analysis' (Indig and Gal 2013) and 'forensic economics' (Lianos 2012), as well as administrative innovations such as competition advocacy (Zywicki and Cooper 2007), have begun to circulate globally. What, if anything, does this institutional and technical proliferation tell us about the significance of territoriality and its ongoing transformation in today's world? This article seeks to answer this question by pursuing two avenues of exploration. First, I read the spread of competition law and economics in light of the historico-theoretical framework of neoliberalism advanced by Michel Foucault in his 1978/79 College de France lectures. This reading constitutes a broad background explaining how neoliberalism brings about a transformation of territoriality as we know it, and how the concepts and practices of competition and the market are at the heart of the art of government that is neoliberalism. Two points make Foucault's work especially relevant to the present inquiry: first, his discussion of neoliberalism essentially as a transformation of state spatiality and the broader system of territoriality, and second, his discussion of competition as the most important building block of neoliberalism. These twin emphases, which are developed below, constitute the intellectual foundation for the discussion of the question of territoriality in this article. Neoliberalism brings about a momentous transformation of nation-state territoriality and it re-organises political space around the notion and practices of 'the market'. Just like exchange and circulation were the building blocks of liberalism, competition is the building block of neoliberalism. The second avenue consists of analysing the conceptualisation and operationalisation of 'the market' in competition law and economics. I take competition laws and the technical instruments that accompany them as both reflecting and constituting global neoliberalism, and I focus on one of those instruments in particular, 'the market definition', as a route to understanding the contemporary state of territoriality. Building on Foucault's theorisation of neoliberalism, I trace how 'the market' begins to constitute a significant conceptual tool to think about globalising relationships, and organise legal interventions in an environment in which territoriality is an insufficient basis for legal and sovereign action. Competition laws are a set of legal and economic rules devised to keep market competition at desired levels and inhibit anti-competitive conduct.3 According to Gerber (2010: 4), 'competition laws are intended to protect the process of competition from restraints that can impair its functioning and reduce its benefits'. While increasing economic efficiency is considered by many to be the ultimate objective (Gürkaynak 2003), particularly post-1980 (Davies 2010: 65), many secondary benefits, such as decreasing consumer prices and fostering innovation, are believed to come about as a result of the implementation of competition laws and policies. In practice, inquiries into potential or actual competition violations and actual mergers and acquisitions among corporations -- two of the most fundamental activities that competition law is designed to oversee -- require, first and foremost, the delineation of the boundaries of the relevant markets to which a specific inquiry applies. Such demarcations concern both the geographic boundaries of the market and the conceptual nature of the product in question. As Kauper puts it, 'market definition is [...] an essential element in a broad range of [competition law] cases, and thus in most cases, relevant markets must be defined in product and geographic terms' (1996: 1683). For the purposes of competition law, a market may be defined as local, sub-national, national, regional or even global in scope. Determinations are made using the tools and techniques of [industrial] economics, often utilising complex algorithms advanced within this discipline. A wealth of information concerning supply and demand dynamics and the conditions of the transportability of the product is fed into the definition of the market. In the contemporary orthodoxy of neoliberal competition law, the goal in such a determination is to actualise maximum economic efficiency by carefully 'setting' the borders of the market (Fox et al. 2004: 189, 196-98). The operation to establish the boundaries of the 'relevant market' presumes a logic that would intervene -- with the force of legality -- into economic relations and geographies. Such a logic in its ideal form does not prioritise territoriality at all. Rather, every time a competition law decision must be made, a rich ensemble of factors is taken into account to determine what the scale of the intervention should be. The market, as elastic, fluid and undetermined as it is, constitutes the basic unit of legal intervention, and efficiency is the measure of its success. Building upon Foucault's historico-theoretical framework of neoliberalism, I argue that the mobilisation of market definition practices within competition law has generated a de-territorialised network concept of sovereignty that is fundamentally at odds with nation-state territoriality and traditional notions of sovereignty. The way the market is designated in competition law as an arena of legal regulation subject to a sovereign gaze, as well as the fact that markets are defined non-territorially, through a fluid, network logic, points to this transformed state of sovereignty and territoriality. Following from the practice of defining market boundaries within competition law, I argue that 'the market' is emerging as a conceptual grid for organising the fluid network of relations that characterise neoliberal globalisation, rendering them governable via legal intervention. More importantly still, the fact that the market and its de-territorialised depiction is becoming an institutionalised practice via the spread of competition laws and agencies suggests that this practice is now becoming a technology that constitutes and enhances further the institutional mechanisms that enabled such practice in the first place.

#### The kritik is a prefigurative politics of resistance that imagines alternate modes of social organization. This is key to foster sustained mobilization

Wigger 18 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “From dissent to resistance: Locating patterns of horizontalist self-management crisis responses in Spain,” Comparative European Politics 16.1, p.35, JCR]

The concepts ‘prefiguration’ and ‘propaganda by the deed’, mostly developed and deployed in anarchist literatures to capture a broad range of subversive tactics and activities (Day, 2005), are well suited to understand transformative agency beyond expressions of dissent and protest that is not merely reactive or defensive but that involves an actual material reorganization of social relations in everyday life. Prefiguration implies that the way in which on-going transformative praxis is organized already entails a presentiment of the envisaged future society, while propaganda by the deed refers to exemplary political actions and interventions in the prevailing system that provide a positive example and stimulate solidarity activities and imitation. As a philosophy of praxis, prefiguration entails moreover that the means, strategies and tactics ought to be commensurable with the envisaged future. Social imaginaries or utopian visions are hence a prerequisite for prefiguration. At the same time, such imaginaries should never be understood as definite blueprints for how the future should look. Prefigurative politics often contains only an incomplete glance of the anticipated future because present tense experiments are always unfinished and imperfect, and thus in process (see also Maeckelbergh, 2013). Prefiguration is thus both a lived radical praxis and a goal for the future. The alternative organization of the social relations of (re-)production can therefore be understood as a prefigurative politics of resistance that operates at the same time as propaganda by the deed. Locations of prefiguration can become ‘infrastructures of dissent’ that enable collective capacities for memory (reflection on past struggles), analysis (theoretical discussion and debate), communication, knowledge transfer and shared learning and can thereby foster sustained mobilization by creating networks of mutual support and spread alternative practices (Sears, 2014: 6; see also Dauvergne and LeBaron, 2014).

### 1nc—DA

Court Clog

#### Antitrust litigation is uniquely complex and resource-intensive---a spike in cases trades-off with judicial functioning in other key areas

Warren 15 (Daniel, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis)

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review is key to patent based innovation—that solves nuclear war

Rando 16 (Robert, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

## DOJ

### 1NC – Defense

#### US has zero democratic credibility any longer

Emma Ashford 21, Senior fellow in the New American Engagement Initiative at the Atlantic Council’s Scowcroft Center for Strategy and Security, "America Can’t Promote Democracy Abroad. It Can’t Even Protect It at Home." Foreign Policy, 01/07/2021, https://foreignpolicy.com/2021/01/07/america-cant-promote-protect-democracy-abroad/.

“What if journalists wrote about U.S. politics the way they wrote about other countries?” asked a dozen tongue-in-cheek articles since 2016. Twitter users joked about the embattled president of a former British colony, huddling in his palace, refusing to concede the election. But all of that ended Wednesday afternoon, when a violent mob rushed past U.S. Capitol Police and invaded Congress, forcing the evacuation of lawmakers and ending with tear gas, gunfire, and at least four deaths. The pictures called to mind Boris Yeltsin on top of a tank, the Arab Spring, or the streets of Venezuela. For those watching around the world, the United States had become what American leaders so often decried: a weak democracy unable to prevent violence and bloodshed from marring the transition of power from one leader to the next.

To be clear, this is not a call for America to retreat from the world; the United States benefits hugely from global engagement. But Wednesday’s crisis lays bare a central flaw with U.S. foreign policy today: Ambitious foreign-policy goals are completely out of step with the realities of the country’s domestic political and economic dysfunction.

How can anyone expect—as Joe Biden’s campaign promised—to “restore responsible American leadership on the world stage” if Americans cannot even govern themselves at home? How can the United States spread democracy or act as an example for others if it barely has a functioning democracy at home? Washington’s foreign-policy elites remain committed to the preservation of a three-decade foreign policy aimed at reshaping the world in America’s image. They are far too blasé about what that image has become in 2020.

Even the projects that have been undertaken since 2016 focusing on the intersection between domestic and foreign politics—such as this recent Carnegie Endowment project—have mostly focused on ways to either sell the country’s existing foreign policy to the American people or fix trade and investment policies so that the middle class benefits more. In reality, what is needed is a wholesale rethinking of foreign policy, a more modest and humble approach to the world, and an attempt to address the real problems created by domestic dysfunction.

Wednesday’s insurrection worsens two concrete foreign-policy problems for the United States. First, it will increase the likelihood that other governments will be wary of any binding commitments or in-depth cooperation with the United States. Four years of Trump have already convinced countries in Europe and Asia that U.S. commitments may not be worth the paper they are written on, particularly in an increasingly partisan environment. The Iran nuclear deal, the Trans-Pacific Partnership, and the Paris climate accords were all victims of a shift to a more partisan, seesaw form of foreign policy. This week’s violence in Washington and the broader political turmoil since the November election have added to those concerns that future U.S. elections may not even be free and fair.

#### Democratic norms doesn’t solve war

Mousseau, Poli Sci Prof @ University of Central Florida, 16

(Michael, Grasping the scientific evidence: The contractualist peace supersedes the democratic peace, Conflict Management and Peace Science

1–18)

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, may be spurious and accounted for by institutionalized market ‘‘contractualist’’ economy. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the profound implication that the spread of democracy will end war. New economic norms theory, on the other hand, yields the contrary implication that universal democracy will not end war. Instead, it is market-oriented development that creates a culture of contracting, and this culture legitimates democracy within nations and causes peace among them. The policy implications could hardly be more divergent: to end war (and support democracy), the contractualist democracies should promote the economies of nations at risk (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, the impact of democracy is zero regardless of how contractualist economy or interstate conflict is measured. There is no misinterpreted interaction term in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an erroneous research design. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a statistical artifact since it does not exist among neighbors where everyone has an equal opportunity to fight.

### 1NC: Turn

#### Democracy causes terrorism.

Burcu Savun 09, Poli Sci Prof @ Pitt, “Democracy, Foreign Policy, and Terrorism, Journal of Conflict Resolution,” Volume XX Number X, pp. online

Many scholars, particularly within the past decade, have argued that democratic states are more likely to be targets of transnational terrorism. According to this camp, there are various aspects of the democratic regimes that facilitate terrorism. First, democracies, by providing freedom of organization, expression, and movement for their citizens, enable terrorist groups to undertake their illegal activities with relative ease (Engene 2004; Hamilton and Hamilton 1983). The commitment to civil liberties in democratic societies can be used by terrorist groups to organize and carry out their attacks without being noticed (Eubank and Weinberg 1994, 2001). Repressive regimes reduce the ability of terrorist groups to organize and carry out their activities, whereas democracies provide a permissive environment. Second, institutional constraints imposed on democratic governments are usually higher than the ones on other types of regimes. Although these constraints are intended to protect the citizens of democracies from the undue exercise of power by their leaders, they also limit the actions and ability of democratic governments to fight terrorism (Schmid 1992; Li 2005; Wilkinson 1986, 2006). Terrorist groups perceive democracies as soft targets that can be pressured to give into their demands due to the sensitivity of democracies to costs. Pape (2003, 2005) shows that terrorist groups tend to target democracies more frequently because they know that liberal democracies usually accede to their demands. Freedom of press is another factor that is argued to encourage transnational terrorism in democracies. A free press serves the interests of terrorist groups whose main goal is to advertise their cause to a wide audience and gain publicity and recognition (Crenshaw 1981). Unlike in repressive regimes, terrorist incidents are more likely to be reported in detail by the free press in democratic societies. Therefore, press freedom in democracies gives a valuable opportunity to publicity-hungry terrorists to create widespread fear (Li 2005; Nacos 1994).

#### Extinction.

Irma Arguello & Emiliano J. Buis 18. Arguello is founder and chair of the NPSGlobal Foundation, and head of the secretariat of the Latin American and Caribbean Leadership Network; Buis is researcher and professor at the NPSGlobal Foundation. 03/04/2018. “The Global Impacts of a Terrorist Nuclear Attack: What Would Happen? What Should We Do?” Bulletin of the Atomic Scientists, vol. 74, no. 2, pp. 114–119.

Making matters worse, there is evidence of an illicit market for nuclear weapons-usable materials. There are sellers in search of potential buyers, as shown by the dismantlement of a nuclear smuggling network in Moldova in 2015. There certainly are plenty of sites from which to obtain nuclear material. According to the 2016 Nuclear Security Index by the Nuclear Threat Initiative, 24 countries still host inventories of nuclear weapons-usable materials, stored in facilities with different degrees of security. And in terms of risk, it is not necessary for a given country to possess nuclear weapons, weapons-usable materials, or nuclear facilities for it to be useful to nuclear terrorists: Structural and institutional weaknesses in a country may make it favorable for the illicit trade of materials. Permeable boundaries, high levels of corruption, weaknesses in judicial systems, and consequent impunity may give rise to a series of transactions and other events, which could end in a nuclear attack. The truth is that, at this stage, no country in possession of nuclear weapons or weapons-usable materials can guarantee their full protection against nuclear terrorism or nuclear smuggling. Because we live in a world of growing insecurity, where explicit and tacit agreements between the relevant powers – which upheld global stability during the post- Cold War – are giving way to increasing mistrust and hostility, a question arises: How would our lives be affected if a current terrorist group such as the Islamic State (ISIS), or new terrorist groups in the future, succeed in evolving from today’s Manchester style “low-tech” attacks to a “high-tech” one, involving a nuclear bomb, detonated in a capital city, anywhere in the world? We attempted to answer this question in a report developed by a high-level multidisciplinary expert group convened by the NPSGlobal Foundation for the Latin American and Caribbean Leadership Network. We found that there would be multiple harmful effects that would spread promptly around the globe (Arguello and Buis 2016); a more detailed analysis is below, which highlights the need for the creation of a comprehensive nuclear security system. The consequences of a terrorist nuclear attack A small and primitive 1-kiloton fission bomb (with a yield of about one-fifteenth of the one dropped on Hiroshima, and certainly much less sophisticated; cf. Figure 1), detonated in any large capital city of the developed world, would cause an unprecedented catastrophic scenario. An estimate of direct effects in the attack’s location includes a death toll of 7,300-to-23,000 people and 12,600-to-57,000 people injured, depending on the target’s geography and population density. Total physical destruction of the city’s infrastructure, due to the blast (shock wave) and thermal radiation, would cover a radius of about 500 meters from the point of detonation (also known as ground zero), while ionizing radiation greater than 5 Sieverts – compatible with the deadly acute radiation syndrome – would expand within an 850-meter radius. From the environmental point of view, such an area would be unusable for years. In addition, radioactive fallout would expand in an area of about 300 square kilometers, depending on meteorological conditions (cf. Figure 2). But the consequences would go far beyond the effects in the target country, however, and promptly propagate worldwide. Global and national security, economy and finance, international governance and its framework, national political systems, and the behavior of governments and individuals would all be put under severe trial. The severity of the effects at a national level, however, would depend on the countries’ level of development, geopolitical location, and resilience. Global security and regional/national defense schemes would be strongly affected. An increase in global distrust would spark rising tensions among countries and blocs, that could even lead to the brink of nuclear weapons use by states (if, for instance, a sponsor country is identified). The consequences of such a shocking scenario would include a decrease in states’ self-control, an escalation of present conflicts and the emergence of new ones, accompanied by an increase in military unilateralism and military expenditures. Regarding the economic and financial impacts, a severe global economic depression would rise from the attack, likely lasting for years. Its duration would be strongly dependent on the course of the crisis. The main results of such a crisis would include a 2 percent fall of growth in global Gross Domestic Product, and a 4 percent decline of international trade in the two years following the attack (cf. Figure 3). In the case of developing and less-developed countries, the economic impacts would also include a shortage of high-technology products such as medicines, as well as a fall in foreign direct investment and a severe decline of international humanitarian aid toward low-income countries. We expect an increase of unemployment and poverty in all countries. Global poverty would raise about 4 percent after the attack, which implies that at least 30 million more people would be living in extreme poverty, in addition to the current estimated 767 million. In the area of international relations, we would expect a breakdown of key doctrines involving politics, security, and relations among states. These international tensions could lead to a collapse of the nuclear order as we know it today, with a consequent setback of nuclear disarmament and nonproliferation commitments. In other words, the whole system based on the Nuclear Non- Proliferation Treaty would be put under severe trial. After the attack, there would be a reassessment of existing security doctrines, and a deep review of concepts such as nuclear deterrence, no-firstuse, proportionality, and negative security assurances. Finally, the behavior of governments and individuals would also change radically. Internal chaos fueled by the media and social networks would threaten governance at all levels, with greater impact on those countries with weak institutional frameworks. Social turbulence would emerge in most countries, with consequent attempts by governments to impose restrictions on personal freedoms to preserve order – possibly by declaring a state of siege or state of emergency – and legislation would surely become tougher on human rights. There would also be a significant increase in social fragmentation – with a deepening of antagonistic views, mistrust, and intolerance, both within countries and towards others – and a resurgence of large-scale social movements fostered by ideological interests and easily mobilized through social media.

#### Democracy causes great power nuclear war – backsliding solves

Muller, director of the Peace Research Institute in Frankfurt, professor of International Relations at Goethe University, 15

(Harald, Democracy, Peace, and Security, Lexington Books pp. 44-49)

My own proposal for solving the problem. developed together with my colleague Jonas Wolff (Müllcr 2004. Muller/Wolff 2006). turns the issue upside down: We do not start with explaining mutual democratic peacefulness, but its opposite. the proven capability of democracies to act aggressively against non-democracies. We note that—apart from self-defense where there is no difference between democracies and non-democracies——democratic states go to war—in contrast to non-democracies—to uphold international law (or their own interpretation thereof), to prevent anarchy through state failure, to “save strangers” when dictatorships massacre their own people, and to promote democracy. None of these acts is likely to find its target in a democracy. Since the use of force by democracies is hardly possible without public justification, even the rhetorical use of the said reasons will not stand public scrutiny when uttered against a democracy—people will not believe it, War other than for self-defense thus can only be fought by democracies against non-democracies because against a fellow democracy justification would fail. Because whether this is the case or not to a degree that justifies war as the ‘ultimate means” must rely on practical judgments. and practical judgments can differ among even reasonable people. democracies might disagree whether or not the judgment applies in specific cases. Democracies also show variance in that regard due (o a systematic. political-culturally rooted different propensity to judge situations as justifing war or not, and to participate in such wars (Gels et al, 2013). It should also be noted that, given the continuum between autocracy, anocracy and democracy, whether a given state is a democracy or not can be subject to interpretation. and this interpretation may even change over time (Oren 1995, Hayes 2013). The fact is that there are a couple of fairly warlike democracies, and that the democracies participating most frequently in military disputes (apart from the special case of Israel) are, by and large. major powers such as the United States, the United Kingdom. France. or India. This pattern is important to keep in mind when the question of the utility of democratic peace for today ‘s world problems is to be answered. Transnational terrorism, failed states, civil wars and the like dominate the international agenda on war and peace. At the classical level of international relations, in the relationships among major powers. developments arc undcr way which potentially pose an even greater threat than this diverse collection of non-interstate problems presently does. We are living in an era of rather rapid and disturbing power change (Tammcn et al. 2000). The United States are still the leading power of the world with unprecedented militany and economic poer. But others are coming closer: China. India. Braiil and Indonesia, China is at the top of this cohort, All major power changes chal lenge existing structures and thus contain the potential for great disturbance. The leading power may start to fear for its dominant position and take measures to ensure its position at the lop. These actions may frustrate emerging powers and even lead to the perception that their security is endangered. which would motivate counter-measures that further propel a political escala tion spiral. An increasingly focused competition in which a true power change appears increasingly possible. that is. a change of position at the top of the international hierarchy, has an even greater risk potential. If the inherent dangers are not contained—which remains always a possibility major power war may ensue defying all propositions that major war has become obsolete or that nuclear deterrence will prevent this calamity once and for all. Of course, states can grow peacefully into roles of higher responsibility. status and influence on the world stage. There arc no natural laws saving that changes in the world’s power structure must end in war, despite all distur bances and ensuing risks (Rauch 2014). The less conflict an emerging power experiences with established ones, and with peer challengers that emerge simultaneously, the better the chances that the rise will travel a peaceful trajectory. Looking through this lens. thc relations of only one emerging power with the present hegemon appear to be partially conflict-pronc. and seriously so: it concerns the pair China/United States. The Iwo great powers are rivals for preponderance in East and South East Asia and eventually for being the number one at the global level. There is also Chinese resentment stemming from the US role in China’s past as a victim of Western imperialism. On the other hand. China’s authoritarian system of rule and ensuing violations of human and political rights trigger the liberal resentment discussed in the first part of this chapter. which is rooted particularly strongly in US political culture. The Chinese—US relationship is thus thc key to a peaceful. tense or even violent future at the world stage. A small group of major powers. Including the United States and China, is interconnected today by a complex conflict system. China has territorial claims against Japan, South Korea, Vietnam. the Philippines. Brunci. and India which it pursues by a variety of means, not shying away from the limited, small scale usc of militan force in some cases, notably against obviously weaker counterparts (Ellcman ci al. 2012). China’s relation (o wards Japan is the one most burdened by China’s past as a victim of Japanese oppression and related cruelties, and the propcnsit of the conservative part of Japan’s elite to display cavalier attitudes towards this past or even sort of celebrate it (as through visits to the notorious Yasukuni shrine hosting the remnants of war criminals) only adds to anti-Japanese feelings in China (Russia. another great power. also openly pursues a revisionist agenda. as vividly shown in the recent Crimean move, but these territorial ambitions are not part of the most virulent conflict complex in Asia). Territorial claims are always emotionalized and dangerous. Territorial claims by a major power bear particular risks, because threatened countries look for protective allies which are, by necessity, major powers with the capability to project power into the region of concern. The great power claimant and the great power protector then position themselves on the opposite sides of the conflict. A classical constellation of great power conflict results that looks far more traditional than all the talk about post-modern global relations in which state power struggles fade into oblivion would suggest. In the Asian conflict complex that structures the shape of the US—Chinese contest (Foot/Walter 201 1). Japan. South Korea and the Philippines arc for mall allied ith the United Slates. India and Vietnam today entertain rda (ions ith the United States that can be depicted as cordial entente, already include military cooperation, and might move further towards an alliance. depending on deelopmens in Asia. The United States is also a protector of Taiwan. officially a Chinese province, factualh an independent political entity. and the main object of Chinese interest because of the unfinished agenda of national re-unification. Given the enormous asymmetries between China and Taiwan. the latter’s independence depends fully and unambiguously on the US guarantee. Russia and China have a fairly ambivalent relation with each other that is officially called a strategic partnership. Ambiguous as this relationship is, it is predictable that the more the West and Russia are at loggerheads, the closer the Russian—Chinese relations might become. On the other hand. Chi na is the stronger partner and harbors not completely friendly feelings to wards Moscow. as Russia took part in China’s humiliation during the imperi alist period no less than the United States did. Russian fears concerning covert immigration into Eastern Siberia and demographic repercussions and political consequences that might result therefrom add to the uneasiness. China and India arc natural rivals for regional preponderance in Asia (Gilbov/Hcginbotham 2012). Both arc developing rapidly. with China still ahead. Territorial disputes. India’s liospitalit Lo TibeLan exiles including the Dalai Lama. China’s close relation to Pakistan and a growing naval rivalry spanning the Indian Ocean from the Strait of Malacca to Iranian shores (Garofano/Dew 2013) run parallel to rapidly growing economic relations and ostensible efforts lo present the relationship if not as amiable then at least as partner-like. The United States, China, Russia and India even today conduct a multi- pronged nuclear arms race (Fingar 2011: Gangul /Thompson 2011: O’Neill 2013. Müllcr 2014). In this race, conventional components like missile de fense. Intercontinental strike options, space-based assets and the specter of cbcr war play their role, as does the issue of extended dcterrcncc The general US militar’ superiority induces Russia and China to improve their nuclear arsenals, while India tries not to be left too far behind the Chinese in terms of nuclear capability. Pakistan and North Korea ork as potential spoilers at the fringe of this arms race. They are not powerful but thc arc capable of stirring up trouble, whenever they move. In tems of the military constellation, the most disquieting development is the drafting of pre-emptive strategies of a first (most likely conventional) strike by the United States and China, on either side motivated by the per ceived need to keep the upper hand early in a potential clash close to Chinese shores (such as in the context of a Taiwan conflict). China is building up middle-range ballistic capabilities to pre-empt US aircraft carrier groups from coming into striking distance and to desiroy US Air Force assets in Okinawa. while the United States is developing means to neutralize exactly these Chinese capabilities. They are steering towards a hair-trigger security dilemma in which the mutual postures cry out for being used first before the enemy might destroy them (Goldstein 2013: Le Miôre 2012). It cannot be excluded that this whole conflict system might collapse into two opposing blocks one da the spark for a major violent cataclysm could even be lighted by uncontrolled non-state actors inside some of the powers. or—in analogy to the role of Serbia in 1914— a ‘spoiler” state with a particularly idios ncralic agenda. Pakistan. North Korea or Tai an arc con ceivable in this role. Even Japan might be considered, if nationalism in Nippon grows further and seeks confrontation with the old rival China. If anything. this constellation does not look much better than the one which drove Europe into World War I a century ago. and it contains a nuclear component. To trust in the infallibility of nuclear deterrence in this mufti- pronged constellation needs quite a lot of optimism Can democratic peace be helpful in this constellation? Our conflict system includes democracies—the United States, India, Japan. Indonesia and non- democracies such as China. Russia, and Vietnam, but not necessarily on the same side. Should the European theater become connected to the Asian one through continuous US—Russian disputes and a Russian—Chinese entente. defective democracies like Ukraine and Georgia may feature rather importantly as potential triggers for a worsening of relationships. While democracy is useful in excluding certain conflict dyads in the whole complex, such as India and the United States. Japan and the United States. Japan and India. from the risk that they might escalate into a violent conflict, and as democratic peace is pacifying parts of the world. such as South America or Europe. it helps little in disputes between democracies and non-democracies. To the contrary: as discussed above, democracies have a more or less moral-emotional inclination to demonize non-democracies once they dis agree, and to feel a missionary drive to turn them democratic. This might exacerbate the existing, more interest-based conflicts between democracies and non-democracies, and it creates fears in the hearts of autocratic leaders that they might be up for democratization sooner or later. The close inter- democratic relations which democratic peace tends to produce, in turn, only exacerbate these fears as democracies tend to be rich, well organized, and powerful and dispose together of much more potent military capabilities than their potential non-dcnwcratic counterparts. Rather than helping with peace. the inter-democratic consequences of the democratic peace tend to exacerbate the security dilemma which exists between democracies and non-democracics an way. This non-peaceful dark side of democratic peace has escaped the attention of most academic writings on this subject and certainly all political utterances about democratic peace in our political systems. But democratic militancy is the Siamese twin of democratic peace as the Bush Administration unambiguously taught us (Gels et al. 2013: Müllcr 2014b).

## Renewables

### 1nc- Circumvention

#### Circumvention is inevitable – all levels of the system- 3 reasons.

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.190-3, JCR]

Focusing on antitrust laws and applying Marx’s theory on competition reveals three reasons for antitrust laws’ ineffectiveness in preventing the accumulation of power and the cannibalism of competition that can be extracted from the recent mega-mergers. First, antitrust law is a regulation imposed by government, and regulatory failure occurs when “regulators tend to be primarily concerned with the welfare of those they regulate”306 rather than carrying out the purpose of the regulation. In the process of regulating competitors and helping them remain competitive, antitrust law regulators have lost sight of the purpose behind antitrust laws, which is to protect consumers307 through the promotion of competition.308 The regulators cannot be fully blamed for such oversight, however, because the current antitrust provisions are pragmatically inadequate in the area of protecting consumer welfare. Consider, for example, the two main guides used in the recent bank mergers, the United States Merger Guidelines309 and Japan Form 9,310 the focus of which is on competitive effects and the possibility of concentration as a result of the merger. In practical effect, however, when analyzing the potential anticompetitive effects of the mergers, the regulators are able to exercise considerable discretion in weighing other factors that can possibly lessen the overall anticompetitive effects. In the Bank of Tokyo-Mitsubishi Bank merger, for example, the JFTC gave considerable weight to other factors that could increase competition, such as recent deregulation and international competition,311 even though the new bank resulted in domination in several relevant product areas. As a result, the JFTC redefined some of those product areas so that the new bank would fall under acceptable limits.312 Second, antitrust law is only one part of a bigger whole in a country’s economic policy.313 By virtue, “antitrust, when unsupported or nullified by other public policies which shape the economic structure, is a limited and ineffective weapon against the concentration of economic power.”314 Because of the increase in global competition, antitrust regulators, together with the policy makers of their country, have fostered an environment wherein national firms that compete internationally are given more opportunities for further expansion.315 Under this formulation, domestically focused companies face a clear disadvantage316 when seeking approval for a merger and when competing directly with the stronger bigger national firm. Consider, for example, the recent Chase Manhattan and Chemical merger, resulting in the new bank attaining substantial market share (corporate and mortgage products) in key regions of the United States, like New York, and the negative impact such concentration may have on the other smaller domestic banks around those areas. In achieving all the advantages to a merger (increased profitability through efficiency and job layoffs), the new bank enjoys dominance over those small banks and can potentially control price in order to oust the competitors. Part of the reason why antitrust regulators in the United States have allowed such a mega merger to occur, despite its substantial anticompetitive effects, is because the current economic policy in the United States supports it. For example, previous deregulation activities in United States banking have made it possible for big banks that provide a vast array of financial services to exist.317 Such openness to strengthening national banks to compete in the international arena can be traced to the policymakers’ recognition318 that the United States has lagged in this area and is now lifting the barriers it placed before. This phenomenon in the United States also explains how antitrust laws in Japan, in light of the Japanese openness to big firms, has not impeded Japanese firms from expanding. In some respects, therefore, the factors that have influenced United States policy makers before, such as the fear of the concentration of power have been mitigated by nationalism and global competition. Third, Marx was correct in theorizing that competition contains the seed of concentration in a capitalist society.319 The advantages that capitalism purports to promote such as innovation and efficiency, also promotes further expansion and accumulation of capital to stay in the game320 and to eliminate other competitors. 321 At first, consumers are able to benefit from the competition fervor through better and cheaper products, but as the competition lessens, the benefits slowly disappear. The very nature of competition creates a cycle where the acts of one firm will ultimately induce action by another firm, thus causing a domino effect. 322 Essentially, the very nature of competition does not promote camaraderie with other competitors because the goal is to attain as much power as possible,323 unless, of course, a consolidation or collusion is planned. Rather than preventing the concentration of power, the current antitrust laws allow for the concentration of power to occur in the hands of few firms. For example, it would only make practical sense in a capitalist system that the recent mega mergers of the two large banks will result in consequent mergers by competing banks, and as long as other competitors exist (even if few), current antitrust provisions allow such mergers to occur. Eventually, such high concentration of power in the hands of a few (oligopolies) will still result in the extinction of true competition, and consumers will no longer face the benefits that competition first brought.324

### 1nc- Lachapelle

#### Resources are thin – expanding the scope of antitrust trades off with SQ efforts and makes the agencies look weak – creating a vicious cycle of more litigation and overstretch

Lachapelle 21 [Tara, opinion columnist for Bloomberg, “Wall Street Is Ready to Put Lina Khan’s FTC to the Test,” *Washington Post*, 08/26/21, <https://www.washingtonpost.com/business/wall-street-is-ready-to-put-lina-khans-ftc-to-the-test/2021/08/25/cb55d2c2-059c-11ec-b3c4-c462b1edcfc8_story.html>, accessed 09/01/21, JCR]

An overburdened U.S. Federal Trade Commission [FTC] is warning acquirers that if they get impatient and close any deals without the agency’s permission, it just might slap them with a lawsuit. Dealmakers won’t hold their breath. As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC. These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong. “To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.” Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process. For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years. In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too. The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.” Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) The Justice Department is pursuing its own case against Google. And what was initially seen as a narrow effort to reel in dominant technology companies has since expanded to other industries in light of a sweeping executive order from President Biden. Even more obscure areas such as ocean shipping are facing new scrutiny. M&A reviews had already become more of a slog in recent years. Dechert LLP’s Antitrust Merger Investigation Timing Tracker — aptly nicknamed the DAMITT report — shows how investigations that once took an average of eight months now stretch into a year or longer: Just because the FTC threatens a drawn-out legal process doesn’t mean a court will take its side in the end. Even as some politicians and antitrust officials look to toughen up M&A laws, judges still rely on precedent, which can be favorable to merging companies (it was for AT&T Inc. in its giant takeover of Time Warner, for instance). An ambitious agenda without the financial resources to match it will also be of less service to consumers than if regulators pick their battles. As it stands now, Khan’s FTC looks like it’s biting off more than it can chew, and its threats aren’t having the intended effect.

### 1NC – Defense

#### Cross apply no credibility – it means Biden can’t solve global issues.

#### Warming won’t be catastrophic.

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that a

re unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

#### No grid impact

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.

#### Cooperative foreign policy from Biden solves global stability.

McKinley, non-resident senior adviser at the Center for Strategic and International Studies, 21

[P. MICHAEL MCKINLEY, 3-30-2021, The Nationalist and Populist Challenge to Foreign Policy, https://jia.sipa.columbia.edu/online-articles/nationalist-and-populist-challenge-foreign-policy]

The incoming Biden administration has thought through a broad range of initiatives to rebuild alliances, reengage multilaterally, and meet transnational challenges. In its first days, the new administration rejoined the Paris Climate Accord and the World Health Organization, toughened our policy towards Russia, and ended our support to Saudi Arabia for the war in Yemen. President Biden is reaffirming American leadership and values and adapting engagement to the landscape impacted by his predecessor. Sometimes the limits are painfully clear, as in the decision not to sanction Saudi Arabia’s Prince Mohammed Bin Salman for the murder of journalist Jamal Khashoggi, the ongoing debate over whether to pull troops from Afghanistan on May 1, and the migration crisis on the U.S.-Mexico border.

The challenge is now almost existential and is not simply about reversing individual policy decisions taken by Trump. The large part of the world governed by authoritarian or populist leaders is unlikely to change policies, especially after four years of a United States that seemed to share their views. European allies are also adopting a wait-and-see mode on whether Biden can make lasting changes given an almost evenly divided U.S. Congress.

The shambles of the January 6 insurrection and the spectacle of the majority of the Republican congressional caucus voting against certifying the presidential election results have highlighted our own democratic vulnerabilities. The opposition to multilateralism inside the Republican party remains strong. The specter of Trump’s foreign policy legacy is not going to simply disappear. February’s Conservative Political Action Conference made that clear.

Critically, the United States is also less influential and more isolated than four years ago. There are challenges to our leadership and competing visions in a rapidly transforming world and not in our favor.

In this context, President Biden’s measured approach in his first few weeks seems just right. His unequivocal “America is back” speech, combined with steps to rejoin international institutions and agreements. The reaffirmations of our critical security alliances are strong foundations for the administration’s strategic review of the broader challenges the United States faces. The pushback on the negative legacy and continuing sway of populist and nationalist actors, domestically and internationally, requires nothing less

#### No populism impact – buffers prevent economic or democratic collapse.

Nye, University Distinguished Service Professor at the Harvard Kennedy School of Government, 17

[Joseph S, January/February 2017, “Will the Liberal Order Survive?,” Foreign Affairs, https://www.foreignaffairs.com/system/files/pdf/anthologies/2017/b0033\_0.pdf

It has become almost conventional wisdom to argue that the populist surge in the United States, Europe, and elsewhere marks the beginning of the end of the contemporary era of globalization and that turbulence may follow in its wake, as happened after the end of an earlier period of globalization a century ago. But circumstances are so different today that the analogy doesn’t hold up. There are so many buffers against turbulence now, at both the domestic and the international level, that a descent into economic and geopolitical chaos, as in the 1930s, is not in the cards. Discontent and frustration are likely to continue, and the election of Trump and the British vote to leave the EU demonstrate that populist reactions are common to many Western democracies. Policy elites who want to support globalization and an open economy will clearly need to pay more attention to economic inequality, help those disrupted by change, and stimulate broad-based economic growth.

It would be a mistake to read too much about long-term trends in U.S. public opinion from the heated rhetoric of the recent election. The prospects for elaborate trade agreements such as the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership have suffered, but there is not likely to be a reversion to protectionism on the scale of the 1930s. A June 2016 poll by the Chicago Council on Global Affairs, for example, found that 65 percent of Americans thought that globalization was mostly good for the United States, despite concerns about a loss of jobs. And campaign rhetoric notwithstanding, in a 2015 Pew survey, 51 percent of respondents said that immigrants strengthened the country.

#### Great power war is unlikely and populism won’t cause one

Cooper, American University PhD, ’16

[Louis F. Cooper, PhD, School of International Service, American University, “WPTPN: Will Populist Nationalism Lead to Great-Power War?” Duck of Minerva, 12—6—16, <http://www.duckofminerva.com/2016/12/wptpn-will-populist-nationalism-lead-to-great-power-war.html>, accessed 5-9-21]

Several reasons present themselves. First, nuclear weapons have given the prospect of a global war, or any great-power war, a possibility of civilization-ending finality that it did not have in the past. Second, the security architecture created under U.S. leadership after World War II has arguably worked to reduce the likelihood of major armed conflict among the great powers. Third, the existence of a network of international institutions, both inside and outside the UN system, has pushed in the same direction. Fourth, it is very possible that, as John Mueller and Christopher Fettweis have argued, decision-makers have to come see great-power war as “subrationally unthinkable, or not even part of the option set for the great powers.”[ii] The extreme destructiveness of the twentieth century’s world wars, fueled partly by developments in technology, might well have produced long-term effects on how leaders and publics think about global or great-power war, in a way, for instance, that the Napoleonic Wars, for all their horror and bloodiness, did not.

Phil Arena’s recent contribution to this series argues that if the U.S. under a Trump administration signals an unwillingness to defend its allies, then Putin might be tempted to gamble on an invasion of the Baltics or Kim Jong-Un similarly might gamble on an invasion of South Korea (and that would drag in China). Putting aside Kim Jong-Un for the moment as a special case, let’s consider Putin. As long as NATO exists – and Trump, despite his statements about the unfairness of the distribution of cost burdens, has not suggested, as far as I’m aware, that he wants to dissolve the alliance – then Putin would have to assume that an attack on the Baltics would trigger a NATO response. Even if Putin does not see great-power war as unthinkable or outside his “option set,” one would assume that for reasons of pure self-interest he would not want to risk a nuclear war. Nor, one might think, would he want to jeopardize the prospect of better (from his standpoint) relations with a U.S. administration less concerned with, among other things, his commission of war crimes in Syria or his annexation of Crimea than the Obama administration has been.

For these reasons, I’m not too worried that the advent of the Trump administration will lead to a war with Russia over the Baltics. The Korean peninsula is, perhaps, a more worrisome situation. Chances are, however, that Trump, after taking office, will be prevailed upon to make reassuring noises about the U.S. commitment to South Korea, and that should suffice to deter Kim Jong-Un from doing anything too rash. The cautionary point here, admittedly, is that it’s not clear whether Kim can be counted on to behave in a minimally rational fashion. Putin, whatever one might think of him, is rational. It’s not entirely clear whether Kim is. However, if Kim is irrational then all bets are off regardless of what U.S. policy pronouncements are forthcoming.

World politics is not invariably cyclical and states can learn from experience (as even Gilpin acknowledged). If one admits this and pays due attention to history, then it is plausible to think that the force of populist nationalism, as expressed in more erratic and/or less ‘internationalist’ official policy, will not, whatever its other effects may be, increase the low likelihood of a global war.

# 2NC

## K

### 2NC: FW

#### Focus on policy agenda influence ignores the concrete material praxis needed for broad social transformation

Wigger 18 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “From dissent to resistance: Locating patterns of horizontalist self-management crisis responses in Spain,” Comparative European Politics 16.1, p.34-5, JCR]

A historical materialist approach gives ontological primacy to historically specific socio-economic realities constituted by the social relations of production and the collective class agency emanating from it. It allows for systematically analysing clusters of class action in a historical context of broader ideational and material structures of power and counterpower. As an emancipatory project, changing the social relations of production is considered the groundwork for a wider social transformation. Analyses in the historical materialist tradition however often suffer from an elitist bias by focusing overwhelmingly on the role and internal fractionation of capital (Wigger and Horn, 2014). Social struggles consequently tend to be reduced to top-down institutional arrangements securing domination within the state apparatus, while dissent, disruption, protest and resistance outside the remit of the state institutional realm, such as demonstrations, strikes, square occupations, as well as more concrete material economic practices, remain analytically and theoretically marginalized (Huke et al, 2015). Emerging forms of resistance are consequently often perceived as limited or as reactive only (Featherstone, 2015). Social movement literatures in contrast clearly give primacy to bottom-up political struggles but often suffer from a similar state-centric bias by focusing predominantly on political demands by social movements vis-a-vis the established state institutional arena, and henceforth, their successes in influencing the policy agenda (McAdam et al, 2001; Tarrow, 2012; Della Porta, 2013). Tarrow (2011: 9), for example, conceptualizes social movements as ‘collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities’. Such a state-centric institutional reductionism is problematic insofar as it tends to ignore forms of concrete material radical praxis that takes place outside the realm of state institutional pressure politics of political parties, trade unions, interest groups, advocacy networks or NGOs and that challenges the very status quo of how the (re-)production of everyday life through work is organized. As a result, the traditional social movement literature has paid little attention to forms of resistance in the form of alternative social relations of (re-)production and the redistribution of material resources. Collective action is moreover frequently portrayed as classless. Certainly, not all forms of collective action are necessarily rooted in class or class awareness; yet, such agency may nonetheless have ‘conjuncturally determined’ class relevance (Jessop, 2002: 32).

### 2NC: Perm Do Both

#### Pragmatism DA – the perm keeps its foot in the door of neoliberalism as a pragmatic move in the face of neoliberal subject formation – that’s a fatalistic move that captures the alt

Reed 18  
(Patricia Reed obtained her BFA from Concordia University, Montreal, and an MA in communications from the European Graduate School, Switzerland. She has been a grant recipient from the Canada Council of the Arts, Akademie Schloss Solitude, Stuttgart (Germany); CCA Kitakyushu (Japan); Foundation and Centre for Contemporary Art Prague, (Czech Rep.); The Banff Centre for the Arts (Canada); and the CCA Ujazdowski, Warsaw (Poland). She was Canada Council Artist in Residence at the Cité des Arts in Paris, 2016. “Optimist Realism: Finance and the Politicization of Anticipation” MoneyLab Reader 2: Overcoming the Hype, 18 January 2018, <https://issuu.com/instituteofnetworkcultures/docs/moneylabreader2overcomingthehype> cVs)

Petrified Futurity Capitalist Realism indexes not only our economic condition, but more pervasively, the 'atmosphere' of political resignation which denies the possibility for any other socio-economic structural scenario. This 'atmosphere' permeates both conscious and unconscious life, including the arena of cultural production (music, art, film, etc.) where instead of seeing boundless innovation (a capitalist premise), we seem caught in retroparalysis: loops of re-makes and pop-cultural revivalism,5 where substantial technological development devolves into trivial consumer gadgetry.' Within such an atmosphere, mental distress and illness has also proliferated as a debilitating symp- tom of the behavioral imperatives this naturalization entails. This is in the way one is compelled to 'govern from within' to adapt to the world successfully in full, entrepre- neurial self-reliance. Such naturalization is internalized as the only system compat- ible with 'innate' humanness, where this picture of 'innateness' is both self-referential and self-reinforcing, coercing the human into a narrow mold wherein the incentive of accumulation through competition is isomorphic with our 'intrinsic' selfishness and self-interest (those very social biases buttressing neoclassical economics, upon which neoliberalism is built). In this framing, capitalism is upheld as the only system com- mensurate with the 'nature' of the human

; to suggest otherwise is to fall prey to folly, almost as nonsensical as fighting the fact of gravity on earth. The diagnosis Fisher puts forth, quite pointedly, is that Capitalist Realism petrifies politics because it stifles our imaginative and perspectival horizons.

The axiom then gets extrapolated: if futurity is always a political project and politics is dead-locked, our future, as such, has become cancelled - a point to which we will return.

#### Inclusion of antitrust dooms the perm – it sustains capitalism by checking its self-destructive drive for accumulation

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.150-2, JCR]

Although “adherence to free enterprise envisages the goal of a self-adjusting, self-regulating market on the principle of choice and competitive rivalries,”28 the free enterprise system is not perfect, however, and the self-regulation of competition can sometimes fail.29 This is so because “an expansive tendency of capitalism is that it will reveal an aspect of fiercer and fiercer competition,”30 and the accumulation of capital becomes a necessary step in order for the company to remain competitive.31 Failure to participate in this expansion and accumulation process “means quitting the competitive struggle [or] economic death.”32 The accumulation of capital is achieved through mergers and acquisitions,33 and the “growing accumulation of capital implies its concentration”34 and the eventual formation of monopolies.35 Government intervention becomes necessary,36 because the existence of monopolies37 contradicts the essence of free enterprise by “[threatening] the efficiency of markets, [reducing] innovation . . . [slowing] economic growth,”38 and subjecting society to the will of a “small handful of dominant firms.”39 The government can prevent companies from gaining a monopoly over certain enterprises by creating and enforcing antitrust laws.

### 1NR: Alt

#### Challenging neoliberal capital requires removing activities from the sphere of competition and bringing them into spheres of cooperation and mutual aid

Wigger & Buch-Hansen 13 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, Hubert, Assoc Prof of International Political Economy at the Copenhagen Business School, “Competition, the Global Crisis, and Alternatives to Neoliberal Capitalism: A Critical Engagement with Anarchism,” *New Political Science* 35.4, p.622, JCR]

What would it take for such a post-neoliberal non-capitalist competition order to emerge? To begin with, the vast terrain of neoliberal definition power has to be reclaimed. Critique is an important first step in the deconstruction and delegitimization of the one-dimensional atomistic and reductionist social scientific precepts that have come to underpin the current (over-)competition order. Eventually, the assertion of a Homo economicus as an always rationally calculating and utility maximizing and egoistic individual detached from society and nature and competing in a Hobbesian dog-eat-dog world, is not only mistaken with regard to human nature but also dogs. Critique should be followed by the dialectics of formulating alternatives and action instigated to move toward a post-neoliberal order. The question is what type of action and by whom? Like capitalism developed in the interstices of feudal society, anarchists would argue that the transformation toward a post-neoliberal and non-capitalist society can only evolve cumulatively by progressively enlarging social spaces with alternative organizational forms rather than awaiting some mass revolutionary moment. Building a post-neoliberal competition order would thus entail DIY in the form of strategic and direct action by individuals and small communities at the micro level—action directed at removing activities from the sphere of competition and bringing them into the spheres of cooperation and mutual aid. The idea then would be to build the new society within the shell of the old, or as Chomsky put it, the roots of a successor project of capitalism and its neoliberal organization will have to be constructed in the existing economy. 89

### 1NR: AT Sustainability

#### Collapse inevitable---Overvalued dollar and account deficit

**Reese 20**

(Reese, Ted, Marxist author in the tradition of Henryk Grossman, 11/03/20, “Socialism or Extinction: Climate, Automation and War in the Final Capitalist Breakdown,” <https://books.google.com/books/about/Socialism_Or_Extinction.html?id=6PMSzgEACAAJ>, accessed 12/19/21, JPR)

It has been predicted that between 2.5 million and 7.5 million US **jobs**, mainly in manufacturing, **will be lost** in the next couple of years because of the **overvalued dollar** (by between 6% and 12%, according to the IMF) – rising by 5.4% in 2018, making imports cheaper and US exports more expensive – and an increasing current account deficit. The US goods **trade deficit** is expected to increase to between $1.2 trillion and $2 trillion in 2020, an increase of $400bn to $1.2 trillion above the $807bn US goods trade deficit in 2017. When General Motors (GM) announced that it would be closing plants and laying off around 15,000 staff by the end of 2019, it was treated as a canary in the coal mine in that GM was clearly moving to protect itself from an expected downturn. The Economic Policy Institute (EPI) commented: “**The collapse in output**, especially in the capital intensive manufacturing sector, **will decimate investment** – and taken together, both will result in large additional job losses as **income and spending collapse**, resulting in a **steep recession** if nothing is done to reduce the overvalued dollar. The dollar must fall by at least 25-30% (on a real, trade-weighted basis) to rebalance US trade and avert the coming trade tsunami that’s baked into the economy as a result of the rising trade deficit.” But – such are the **contradictions of capitalism in decay** – a devaluation of the dollar will weaken the US’s control of the international market. The dollar’s role as the main currency for foreign exchange has until now enabled the US to strong-arm most countries into complying with its demands.

**The system is crisis-prone—collapse is inevitable**

**Li ’13** Minqi Li, “The 21st Century: Is There An Alternative (to Socialism)?” Science & Society: Vol. 77, January 2013, No. 1, pp. 10-43, doi: 10.1521/siso.2013.77.1.10

Over the past one and a half century, the long-term tendency towards rising wage, taxation, and environmental costs seem to have accelerated. The rising wage and taxation costs have reflected the long-term challenges from the “anti-systemic movements” (social democracy, national liberation movements, and “communism”), which forced the system’s ruling elites to make major concessions in the mid-20th century. The rising environmental costs have resulted from the relentless capital accumulation, which has greatly accelerated the depletion of the natural resources and the degradation of the global environment (Wallerstein, 2003, 57-66). As a result, the capitalist world system has been under great pressure to accelerate the pace of global industrial relocation. This has led to the dramatic expansion of the geographic zone of semi-periphery over the past quarter of a century. Most importantly, China and India, by serving as the centers of the latest round of global industrial relocation, have joined the rank of the semi-periphery. China’s per capita GDP has by now risen to about one-seventh of the US level and India could reach a similar relative level in about a decade. Given the enormous size of the Chinese and Indian population, then by around 2020, the world semi-periphery (defined as the geographical areas with per capita GDP around one-fifth of the level in the most advanced capitalist state) would have expanded to include about 60 percent of the world population. Can the capitalist world system survive such a massive expansion of the semi-periphery? With the massive expansion of the semi-periphery, there will inevitably be a major redistribution of the world surplus value. As less of the world surplus value is concentrated in the core, it will become increasingly difficult for the core states to finance capital accumulation in the leading industries. The core states will also have growing difficulty to maintain a large pool of “cadres”, the system’s skilled and managerial labor force or the “middle class”. Already, virtually all core capitalist countries are now confronted with insurmountable fiscal crises. Fiscal crisis, in essence, is the sign that capitalism in the core zone can no longer simultaneously provide favorable conditions of capitalist accumulation while maintaining “social peace” (that is, to secure the political loyalty of the middle classes) at home. It is widely recognized that the US hegemonic power is in irreversible decline, both in the sense that the relative economic position of the United States has been falling in the capitalist world system and in the more important sense that the United States is less willing and less able to regulate the system for the system’s long-term, common interest. The current expansion of the semi-periphery has obviously accelerated the decline of the US hegemonic power. More ominously for the capitalist world system, the great expansion of the semi-periphery has also made it much less likely and even impossible for a new hegemonic power to emerge by dramatically increasing the number of states that is relevant in the system-wide politics. This is shown by the expansion of the most high-profiled global policy making body from the so-called “G7” group to the so-called “G20” group. The capitalist world system is an inter-state system. The arrangement of the inter-state system is necessary for maintaining a balance of power between the state and capital in terms that are favorable for capital accumulation. However, the system also has a fatal flaw. As the system does not have a “world government”, there is no effective mechanism to secure and promote the system’s long-term, common interest (such as global peace, global macroeconomic management, construction of global social compromise, and global environmental management) and unrestrained inter-state competition could lead to the system’s self-destruction. Historically, the capitalist world system has relied upon the periodic hegemonic powers (the Netherlands in the 17th century, the United Kingdom in the 19th century, and the United States in the 20th century) as a proxy for the world government to regulate the system’s long-term, common interest. With the massive expansion of the semi-periphery, this historical mechanism required for the normal functioning of the capitalist world system begins to break down (Li 2008, 113-138).

**Infinite growth crowds out environmental health**

**Magdoff ’12** Fred Magdoff, Professor emeritus of plant and soil science at the Unviersity of Vermont, “Harmony and Ecological Civilization,” Monthly Review, June 2012, Vol. 64, Issue 2, p. 1-9

The growth imperative of capitalism deserves special attention because it is one of the major stumbling blocks with respect to harmony between humans and the environment. Accumulation without end means using ever greater quantities of resources—without end—even as we find ways to use resources more efficiently. An economy growing at the very meager rate of 1 percent a year will double in about seventy-two years, but one growing at 2 percent a year, still a low rate, will double in size in thirty-six years. And when growing at 3 and 4 percent, economies will double in twenty-four and eighteen years respectively. China recently has seen recorded growth rates of up to 10 percent, meaning economic output doubles at a rate of approximately every seven years! Yet, we are already using up resources far too fast from the one planet we have—depleting the stocks of nonrenewable resources rapidly and misusing and overusing resources that are theoretically “renewable.” If the world’s economy doubles within the next twenty to thirty years this can only hasten the descent into ecological, and probably societal, chaos and destruction. Thus capitalism promotes the processes, relationships, and outcomes that are precisely the opposite of those needed for an ecologically sound, just, harmonious society. In the alienated ideology and practice of bourgeois society, Marx and Engels noted in The German Ideology, “the relation of man to nature is excluded from history and hence the antithesis of man to nature is created.” Proletarians thus had the historical task of bringing their “‘existence’ into harmony with their ‘essence’ in a practical way, by means of a revolution” (italics added).3 Only in this way could they reestablish a harmonious connection to nature and to their own production. That Marx and Engels were referring directly to the early stages of what we now call the ecological crisis is indicated by the following: “The ‘essence’ of the fish is its ‘being,’ water—to go no further than this one proposition. The ‘essence’ of the freshwater fish is the water of a river. But the latter ceases to be the ‘essence’ of the fish and is no longer a suitable medium of existence as soon as the river is made to serve industry, as soon as it is polluted by dyes and other waste products and navigated by steamboats, or as soon as its water is diverted into canals where simple drainage can deprive the fish of its medium of existence.”4

## Incentives CP

### AT Domestic Only Not Solve

#### Positive incentives solve best – key to overcome international barriers to enforcement

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

This article argues that firms have an underutilised societal role in competition law enforcement. There is inherent societal value in compliance efforts when ensuring the functioning of competitive markets, and a broader palette of measures to impact firm conduct that help prevent anticompetitive conduct could potentially benefit society at large. Ideas of responsive regulation and shared governance have promoted a framework that has become increasingly common in other policy areas and made regulatory approaches more collaborative and nuanced. Improving firms’ motivation to self-police by adopting an approach that embraces positive incentives allows them to act as an extension to the efforts of competition authorities and takes pressure off the capacity restrictions of formal enforcement. Rewarding firms for their compliance efforts should not be a question of whether infringers are granted a ‘cheap insurance policy’, but rather about how society can implement measures to improve the competitiveness of its markets in an optimal cost-benefit balance. Since the pay-out would occur in only seldom cases vis-à-vis the broad preventive impact, the competition community would be wise to look beyond its immediate enforcement cases at hand and the associated fining. In addition to creative ways of rewarding compliance efforts, as such, another example of potential positive incentives concerns reporting. Establishing an obligation for firms to report their competition compliance efforts would also be helpful as an additional incentive. The EU intends to review its NFR Directive during 2020 as part of its strategy to strengthen the foundations for sustainable investment.129 This would be a prime opportunity to extend it to concern competition compliance, which would also increase policy coherence. Most importantly – however – is conceptual understanding of the necessary complementary function firm-level compliance efforts have in ensuring functioning markets. Competition law scholarship is not sufficient to design an adequate approach to competition compliance.130 While economics is emphasized in competition policy, understanding corporate conduct and how policymakers can influence it requires lending research also from other fields, such as psychology, and sociology. While some may wish to consider competition compliance to be an area sui generis, I am reluctant to such notions. Forward-looking policymakers would be wise to see what approaches are taken in other areas of regulatory compliance with an aim to learn from them. From a firm perspective, whose task is to comply with a wide array of regulation, policy coherence has significant value. Taking a broad viewpoint, an international, multilaterally accepted way forward that encourages and incentivises companies to avoid anticompetitive conduct could benefit us all. And, in any case, promoting such measures has the potential of bringing about improvements, while leaving national sovereignty – the usual sticking point in developing international antitrust – untouched. As long as anticompetitive conduct continues to occur, all tools that can improve the functioning of competitive markets are worth considering. A bit of creativity and open-mindedness can go a long way in improving national deterrence as well as the coherence of international antitrust. A shift towards an ‘enabling environment’ in competition policy – appreciating the partnership role of firms – could be useful, and added focus towards incentivising preventive measures has merit as a tool in doing so.

#### Solves international antitrust

Ristaniemi 20 [Michael, VP of Sustainability at Metsa Group, acting as competition counsel, nominated for the 2019 Antitrust Writing Awards, “Rewarding Competition Compliance – Its Societal Value and How Policy Alignment Can Help, Liikejuridiikka - Finnish Business Law Journal, JCR]

Developing competition compliance incentives presents significant opportunities for improving the state and coherence of international antitrust. This is due to the reality of diverging volume and quality of competition law enforcement. Most nations have competition laws on paper, but enforcement is often inconsistent or otherwise lacking. An increased emphasis should arguably thus be placed on improving enforcement standards and practices. Enforcement gaps may result from a number of reasons. Whether it is a lack of resources, experience or formal jurisdiction, it is clear that all competition authorities are not equally up to their enforcement tasks. An improved impetus for firms to maintain robust compliance programs, self-police and to be transparent about their actions could help make up for part of the deficit. Doing so could, in turn, partially decrease other fragmentation within international antitrust – such as deriving from extraterritorial application by nations with more vigorous competition enforcement. Reduced fragmentation arguably increases predictability from a business perspective. Many developing countries suffer from inefficient markets, and an approach that could help markets function better would inevitably benefit local economies and consumers. Not to mention that cooperating in building standards in relation to competition compliance incentives could help build both trust between the developing world and the EU and the US, the traditional leaders in competition matters, and also confidence in competition policy, in general. In terms of form, international hard law in competition matters has been very challenging to agree upon, for a number of reasons, and it is unclear whether it would even be desirable.125 Soft law, in the form of voluntary frameworks and recommendations, has a much more positive track record. Several multilateral efforts have resulted in best practices recommendations that have arguably not been insignificant. The differentiating factors between the two emanating from the voluntary, nonbinding nature, which have allowed nations to build trust and cooperate in areas that suit their preferences, and arguably with lower cost.126 Particular de facto significance can be assigned to those produced within the ICN, given its broad and varied mix of participating competition agencies and experts. One could thus beg the question of whether soft law approaches concerning positive incentives – inter alia reporting – could also be of use in a competition context, similarly like in the case of ESGs. An initiative by the ICN, the OECD or by another relevant supranational organisation would be welcomed in the area of encouraging adopting positive incentive based approaches to complement existing forms of deterrence. This could perhaps be modelled similarly to the recently created ICN Framework for Competition Agency Procedures, which is an opt-in multilateral framework for national competition agencies and which seems as a rather promising instrument in form.127 Alternatively something akin to a OECD Competition Division Recommendation, which is a more conventional manifestation of a best practice soft law instrument, could be useful and, while less ambitious an instrument, it should at least not be beyond reach.12

### AT “Positive Incentives Fail”

#### Deterrence fails – positive incentives for self-regulation are key to solving antitrust

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The current approach in competition law towards deterrence of anticompetitive conduct is through ex post sanctions, including related enforcement, and is insufficient. There is inherent societal value in better encouraging competition law compliance by firms. Added focus should be placed on creative complementary measures that do so, including rewarding desired conduct using positive incentives. Firms should be seen not only as potential infringers, but also as valuable partners in ensuring competitive markets. Compliance tools used in relation to competition policy focus less on preventive measures than some other areas of regulatory compliance, such as environmental protection, anti-bribery, and corporate sustainability, which provide useful points of learning. Improved self-enforcement by firms could moreover help improve the state of international antitrust by narrowing the enormous disparity between various national competition authorities’ resources and capacity.

#### Corporate decision-makers are not solely motivated by profit and public policy can align incentives with the public good to influence corporate behavior. Empirical data proves.

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Understanding the role of ethics in influencing corporate conduct is key. Rational choice theory presupposes that firms and their executives are rational actors, conducting cost-benefit analyses and then deciding accordingly in line with what maximises utility. In such cases deterrence will vary based on the ‘price’ of misconduct relative to anticipated gains.20 However, such decision-making has actually in many cases been shown to be quite pluralist – taking into consideration social and normative motives in addition to purely economic ones.21 In addition, Kahnemann and Tversky have shown us, decision-making in both the C-suite as well as managerial conduct below are affected by a number of biases.22 Langevoort summarizes the key idea by explaining that when presented with “…temptations to cheat, most human beings cheat less than they could, but more than they should.”23 Put differently, firm directors and managers do have a desire to ‘do the right thing’, but that the likelihood of the right thing happening could be amplified with support by, eg., better public policy initiatives. This implies that there might be yet-unseized potential of positive incentives in competition law and its enforcement. Psychological literature states the importance of employees’ subjective feeling of trust and a perception of legitimacy towards compliance efforts.24 As such, purely formal or top-down approaches or systems emphasizing employee monitoring are usually not perceived as very persuasive in corporate environments and will, thus, likely fail on achieving their objectives.25 Vaughan argues that culture is the mediating link between exchanges formal management structure and agency, ie. the decisions and actions of individual employees or managers.26 Further, Langevoort argues that despite monitoring and control, there will inevitably be ‘hiding places’ within firm structures for noncompliance to take place – unless the firm’s employees share a proper culture of integrity and compliance.27 Finell argues that internal attitudes towards compliance and ethics are strongly informed also by the ethical atmosphere beyond the firm. Since firms operate as part of value chains, the attitudes of their key customers and investors will likely have an impact on their attitudes.28 Moreover, in addition to the framework created by policymakers and regulators, broader values within a firm’s industry and in society by and large have an impact on its corporate culture.29 In any case, public policy choices have an important role in steering a company’s compliance efforts and emphasis. For example, the United States (US) Sentencing Guidelines do just that. They ‘offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization may self-police its own conduct through an effective compliance and ethics program’.30 This approach specifically addresses criminal conduct, but does not otherwise prioritise areas requiring compliance over others. In addition to hard regulation, policymakers are in a position to legitimise self-regulation by developing voluntary standards as well as jointly developing criteria for such standards with private actors and endorse them when connected to public procurement or investment.31 Promoting the role of firms as an extension of policymakers and enforcers has an established track record. Ayres & Braithwaite have brought forward a theory of so-called responsive regulation as a way to undertake this. Responsive regulation refers to the government, first, listening to and cooperating with firms and consequently choosing from various regulating strategies those which best suit each respective situation.32 Applications of the theory they put forward on engaging firms as partners of the government has been tested several times and the subsequent data provides an interesting backdrop. In short, enforcement strategies that utilise a mixture of approaches and which have a cooperative element have been shown to bring positive results.33 More broadly, such notions form a part of social constructionist theories of the essence of “compliance” and “regulation” which sees them more as network interactions of various interrelated actors.34 This complexity is relevant to identify, as it allows for an appreciation for utilising a variety of tools to achieve a specific policy goal.

### 2NC- Deterrence w Cartells

#### Cartel deterrence is impossible – enforcement costs are too high. Only creating incentives for self-regulation solves.

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Competition law enforcement – both private and public – is concerned with eliminating negative externalities, by passing them back to the entity that has inflicted them by breaching competition law. Commonly, the deterrence effect of said enforcement and the related financial consequences for infringers forms the core of a regime’s toolbox in combating anticompetitive conduct. Detection is aided by leniency programs, whose popularity as an enforcement tool continues to increase internationally. A common metaphor equates this activity to a surgeon’s work in cancer treatment – keeping healthy tissue intact while removing what is causing problems. The premise for this article is that the competition community’s policy toolbox is too narrow and, as such, not effective enough. It is illustrative that overcharges of international cartels alone between 1990 and 2015 have been around USD 500 billion, but corresponding sanctions amounted only to USD 13.5 billion.3 Although profitability of cartels appears to vary considerably4 , it is easy to agree with Gal in stating that international cartels face under deterrence and sub-optimal enforcement, a point also shown by Levenstein & Suslow’s empirical research.5 And international cartels are only one manifestation of anticompetitive conduct. Further, even when a cartel is detected, Hellwig and Hüschelrath have shown that an average enforcement process takes a total of 102 months to complete at the EU level – 51 months of investigating by the Commission, followed by another 51 months by the General Court, acting as the first-instance appellate court.6 The effort and cost associated with this time period must be enormous and – to the extent some of those cartels could have been prevented – unnecessary. It is thus clear that anticompetitive conduct is not fully deterred by the threat of fines. It must also be noted that this article is not solely about improving cartel deterrence, but concerning how to better prevent anticompetitive conduct of all kinds by better incentivising compliance efforts. This article argues that in addition to ‘cancer treatment’, competition policy should better accommodate the work of a ‘wellness coach’ – activity that encourages healthy habits and prevents diseases, such as cancer, from taking place at all. To achieve this, it is not without meaning to consider the motivation of the main actor in competition law, the firm. They are the key actors in competitive markets, since they are the ones who can both create competition and distort it. Further, they have an informational advantage over authorities and are better placed to monitor and prevent unwanted conduct.7 Focus should thus be on how to better induce them to compete and, at the minimum, avoid anticompetitive conduct – thus fulfilling their societal role. More effective incentives – including positive incentives –for firms to comply with competition law could help optimise this. The idea being not to substitute, but rather to supplement the current approach. A broader and more effective approach to encouraging compliance could also improve the patchy existence of international antitrust. Today’s global world order in competition law is comprehensive – most of the world’s nations have enacted some sort of competition laws.8 Yet international rules on competition continue to elude us and the world order is consequentially one of fragmented existence. One of the major points of disparity is enforcement capacity across nations. Perhaps encouraging firms to self-police applicable competition laws and foster a culture of integrity and competition could, in part, help, as discussed in Chapter 4. The article’s propositions will not apply to all the problems in antitrust. The inherent problems with state-imposed competitive restraints will not be affected. These are more difficult to fix, since they touch upon a nation’s sovereignty and public policy more directly. Further, coordination issues with enforcement overlaps will remain even with improved incentives for firms to comply with competition law. However, the chosen focus on positive incentives is nevertheless relevant. Better incentives translate into better prevention of competition law violations, which translates into less negative externalities imposed on societies

## Court Clog

#### The tradeoff corrodes antitrust law across all sectors- no credible deterrence threat

Baker & Salop 15 [Jonathan, Prof of Law at American Univ Washington College of Law, Steven, Prof of Economics and Law at Georgetown Univ Law Center, “Antitrust, Competition Policy, and Inequality,” *Georgetown Law Journal Online* 104, https://tinyurl.com/hvpvetn2, accessed 7/31/21, p.18, JCR]

Greater antitrust enforcement generally would improve the distribution of income and wealth by reducing the impact of market power, particularly if the agencies fully embrace the consumer welfare standard. But federal and state antitrust enforcement today is limited by agency budgets. Because every enforcement action has an opportunity cost, the agencies limit the intensity of their enforcement efforts and have to pick and choose which matters to pursue. They similarly are constrained in their ability to litigate multiple cases against deep-pocketed defendants, which may lead them to accept weaker settlements. Private plaintiffs add additional enforcement capacity, but they cannot employ the investigative tools available to the government, so they have less ability to uncover and challenge many types of anticompetitive conduct. If federal and state agency antitrust budgets were increased, the agencies could do more to protect consumers and reduce inequality, even without any changes in antitrust law. Although this proposal would need to compete for scarce tax dollars with other policies for combating income and wealth inequality, it may be more feasible politically to increase antitrust budgets than to adopt policy alternatives incorporating more direct redistribution. In addition, even a modest increase in those budgets may have beneficial effects on deterrence.

#### Circumvention is inevitable – all levels of the system- 3 reasons.

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.190-3, JCR]

Focusing on antitrust laws and applying Marx’s theory on competition reveals three reasons for antitrust laws’ ineffectiveness in preventing the accumulation of power and the cannibalism of competition that can be extracted from the recent mega-mergers. First, antitrust law is a regulation imposed by government, and regulatory failure occurs when “regulators tend to be primarily concerned with the welfare of those they regulate”306 rather than carrying out the purpose of the regulation. In the process of regulating competitors and helping them remain competitive, antitrust law regulators have lost sight of the purpose behind antitrust laws, which is to protect consumers307 through the promotion of competition.308 The regulators cannot be fully blamed for such oversight, however, because the current antitrust provisions are pragmatically inadequate in the area of protecting consumer welfare. Consider, for example, the two main guides used in the recent bank mergers, the United States Merger Guidelines309 and Japan Form 9,310 the focus of which is on competitive effects and the possibility of concentration as a result of the merger. In practical effect, however, when analyzing the potential anticompetitive effects of the mergers, the regulators are able to exercise considerable discretion in weighing other factors that can possibly lessen the overall anticompetitive effects. In the Bank of Tokyo-Mitsubishi Bank merger, for example, the JFTC gave considerable weight to other factors that could increase competition, such as recent deregulation and international competition,311 even though the new bank resulted in domination in several relevant product areas. As a result, the JFTC redefined some of those product areas so that the new bank would fall under acceptable limits.312 Second, antitrust law is only one part of a bigger whole in a country’s economic policy.313 By virtue, “antitrust, when unsupported or nullified by other public policies which shape the economic structure, is a limited and ineffective weapon against the concentration of economic power.”314 Because of the increase in global competition, antitrust regulators, together with the policy makers of their country, have fostered an environment wherein national firms that compete internationally are given more opportunities for further expansion.315 Under this formulation, domestically focused companies face a clear disadvantage316 when seeking approval for a merger and when competing directly with the stronger bigger national firm. Consider, for example, the recent Chase Manhattan and Chemical merger, resulting in the new bank attaining substantial market share (corporate and mortgage products) in key regions of the United States, like New York, and the negative impact such concentration may have on the other smaller domestic banks around those areas. In achieving all the advantages to a merger (increased profitability through efficiency and job layoffs), the new bank enjoys dominance over those small banks and can potentially control price in order to oust the competitors. Part of the reason why antitrust regulators in the United States have allowed such a mega merger to occur, despite its substantial anticompetitive effects, is because the current economic policy in the United States supports it. For example, previous deregulation activities in United States banking have made it possible for big banks that provide a vast array of financial services to exist.317 Such openness to strengthening national banks to compete in the international arena can be traced to the policymakers’ recognition318 that the United States has lagged in this area and is now lifting the barriers it placed before. This phenomenon in the United States also explains how antitrust laws in Japan, in light of the Japanese openness to big firms, has not impeded Japanese firms from expanding. In some respects, therefore, the factors that have influenced United States policy makers before, such as the fear of the concentration of power have been mitigated by nationalism and global competition. Third, Marx was correct in theorizing that competition contains the seed of concentration in a capitalist society.319 The advantages that capitalism purports to promote such as innovation and efficiency, also promotes further expansion and accumulation of capital to stay in the game320 and to eliminate other competitors. 321 At first, consumers are able to benefit from the competition fervor through better and cheaper products, but as the competition lessens, the benefits slowly disappear. The very nature of competition creates a cycle where the acts of one firm will ultimately induce action by another firm, thus causing a domino effect. 322 Essentially, the very nature of competition does not promote camaraderie with other competitors because the goal is to attain as much power as possible,323 unless, of course, a consolidation or collusion is planned. Rather than preventing the concentration of power, the current antitrust laws allow for the concentration of power to occur in the hands of few firms. For example, it would only make practical sense in a capitalist system that the recent mega mergers of the two large banks will result in consequent mergers by competing banks, and as long as other competitors exist (even if few), current antitrust provisions allow such mergers to occur. Eventually, such high concentration of power in the hands of a few (oligopolies) will still result in the extinction of true competition, and consumers will no longer face the benefits that competition first brought.324

#### Court circumvention---they ignore intent and plain meaning, reject literature bias towards optimism.

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

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

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

#### Clarifying the scope and meaning of vague language doesn’t solve---courts ignore, Congress backs down, it’s already very clear.

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

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes— the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts—each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases,256 and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case.257 Given that neither statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a “this time we mean it” statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

#### Vagueness dooms solvency – big business lawyers and judges subvert the plan

**Stoller, 21** -- American Economic Liberties Project research director

[Matt Stoller, former policy advisor to the Senate Budget Committee, "Why Did Congress Just Vote to Break Up Big Tech?," BIG, 6-25-21, https://mattstoller.substack.com/p/why-did-congress-just-vote-to-break, accessed 6-25-2021]

The bad is pretty simple. The tech-specific bills, as written, probably won’t deliver what their sponsors think they will, because they didn’t get all the specifics right. This isn’t intentional, it’s just that it is hard to write this kind of legislation. A friend once told me a good legal expression, ‘to write a good law, you have to think like a criminal.’ And that’s basically right. There are **extremely well-paid lawyers** who will spend their time exploiting the **tiniest loophole**, so good drafting means thinking about making statutes airtight. Competition law is complex and warped to make drafting full of **legal minefields**, so without extreme care in the language, the law will likely be **subverted**.

To understand why it’s so hard to get these laws right, it helps to start with the two basic problems with antitrust law. The first is that regulators and enforcers make key policy decisions, and have done a very bad job at it. A good example is they just decided to stop enforcing the anti-chain store Robinson-Patman Act, which prohibits certain forms of kickbacks, as well as prohibiting giving better prices to bigger customers. At some point in the 1970s and 1980s, the Department of Justice and FTC chose not to enforce the law anymore. And when they stopped doing so, Walmart and other chain stores, and eventually Amazon, exploded in size and power.

And then there are judges. Judges have been trained in a type of thinking in which antitrust is all about promoting a certain form of economics, known as ‘consumer welfare.’ Most of the things you and I would consider unfair, like paying kickbacks to someone to stop them from selling rival products, or selling below cost to drive your competitors out of business, or intentionally making your products incompatible to undermine smaller rivals, judges tend to see as ‘pro-competitive,’ which is to say, good and efficient. I’m not kidding. Yesterday, Obama-appointed judge Daniel Crabtree dismissed an antitrust case against Epipen maker Mylan, which was paying bribes to stop their competitor’s product from being available to consumers. To Crabtree, such bribes weren’t corrupt, they were efficient!

It’s not that judges are corrupt, it’s that there is now 40 years of case law saying that they must generally be hands-off and let firms do what they want. And to get judges to rule in your favor, plaintiffs must spend millions of dollars getting an economist to make up fancy models saying that intervening in a particular case creates more economic value than not intervening, and then hopefully the judge flips a coin and likes your expert more than Amazon’s expert. To put it differently, imagine if, say, you had to show in any robbery case not just that your money was stolen, but that you would spend your money more wisely than the person who took it. That’s basically what antitrust is like these days. This is called ‘consumer welfare’ but it is in fact just a corrupt and foolish way to understand law.

The way to address both problems - bad regulators and bad judges - is to write very specific and careful legislative text. Give clear instructions on which practices are and are not legal, and try to avoid corrupted words like competition, which only invite judges to opine on economic questions. Moreover, have a clear vision on what gets broken off from what. These bills don’t really do that. (Neither did Klobuchar’s bill introduced earlier this year; state Senator Michael Gianaris’s antitrust update in New York came closer.)

The break-up bill, for instance, centers on conflicts of interest between lines of business. But it never defines what it means by “line of business,” and **this stuff gets very blurry**. **Big tech will use** this **ambiguity to its advantage**. Right now, for instance, Amazon has a marketplace on Amazon.com. It also has a logistics business, Fulfillment by Amazon. If you try to split these two obviously different divisions apart, Amazon will claim that these are all one line of business, with Amazon Prime, Fulfillment by Amazon, and Marketplace all one thing. And then a judge gets to decide whether that’s true, because this bill doesn’t. Judges really don’t like to make what they perceive of as product design decisions, preferring to defer to monopolists. So yeah, that’s a problem.

This problem is pervasive across the legislative text. The merger bill, rather than a straightforward ban on big tech mergers, instead says big tech firms have to jump through a bunch of hoops showing that whoever they are buying doesn’t compete with them or potentially compete with them. That sounds fine, except that judges understand ‘competition’ to mean very expensive and unwieldy fights over how to define the market, according to fancy expensive economists. So basically enforcers will still have to unnecessarily spend massive resources to stop big tech mergers, though they will have more authority to do so. (Also, during the mark-up, big tech managed to punch a hole through this one, exempting mergers of less than $50 million. But that happens.)

## ADV 1

### Defense

#### Extinction.

Irma Arguello & Emiliano J. Buis 18. Arguello is founder and chair of the NPSGlobal Foundation, and head of the secretariat of the Latin American and Caribbean Leadership Network; Buis is researcher and professor at the NPSGlobal Foundation. 03/04/2018. “The Global Impacts of a Terrorist Nuclear Attack: What Would Happen? What Should We Do?” Bulletin of the Atomic Scientists, vol. 74, no. 2, pp. 114–119.

Making matters worse, there is evidence of an illicit market for nuclear weapons-usable materials. There are sellers in search of potential buyers, as shown by the dismantlement of a nuclear smuggling network in Moldova in 2015. There certainly are plenty of sites from which to obtain nuclear material. According to the 2016 Nuclear Security Index by the Nuclear Threat Initiative, 24 countries still host inventories of nuclear weapons-usable materials, stored in facilities with different degrees of security. And in terms of risk, it is not necessary for a given country to possess nuclear weapons, weapons-usable materials, or nuclear facilities for it to be useful to nuclear terrorists: Structural and institutional weaknesses in a country may make it favorable for the illicit trade of materials. Permeable boundaries, high levels of corruption, weaknesses in judicial systems, and consequent impunity may give rise to a series of transactions and other events, which could end in a nuclear attack. The truth is that, at this stage, no country in possession of nuclear weapons or weapons-usable materials can guarantee their full protection against nuclear terrorism or nuclear smuggling. Because we live in a world of growing insecurity, where explicit and tacit agreements between the relevant powers – which upheld global stability during the post- Cold War – are giving way to increasing mistrust and hostility, a question arises: How would our lives be affected if a current terrorist group such as the Islamic State (ISIS), or new terrorist groups in the future, succeed in evolving from today’s Manchester style “low-tech” attacks to a “high-tech” one, involving a nuclear bomb, detonated in a capital city, anywhere in the world? We attempted to answer this question in a report developed by a high-level multidisciplinary expert group convened by the NPSGlobal Foundation for the Latin American and Caribbean Leadership Network. We found that there would be multiple harmful effects that would spread promptly around the globe (Arguello and Buis 2016); a more detailed analysis is below, which highlights the need for the creation of a comprehensive nuclear security system. The consequences of a terrorist nuclear attack A small and primitive 1-kiloton fission bomb (with a yield of about one-fifteenth of the one dropped on Hiroshima, and certainly much less sophisticated; cf. Figure 1), detonated in any large capital city of the developed world, would cause an unprecedented catastrophic scenario. An estimate of direct effects in the attack’s location includes a death toll of 7,300-to-23,000 people and 12,600-to-57,000 people injured, depending on the target’s geography and population density. Total physical destruction of the city’s infrastructure, due to the blast (shock wave) and thermal radiation, would cover a radius of about 500 meters from the point of detonation (also known as ground zero), while ionizing radiation greater than 5 Sieverts – compatible with the deadly acute radiation syndrome – would expand within an 850-meter radius. From the environmental point of view, such an area would be unusable for years. In addition, radioactive fallout would expand in an area of about 300 square kilometers, depending on meteorological conditions (cf. Figure 2). But the consequences would go far beyond the effects in the target country, however, and promptly propagate worldwide. Global and national security, economy and finance, international governance and its framework, national political systems, and the behavior of governments and individuals would all be put under severe trial. The severity of the effects at a national level, however, would depend on the countries’ level of development, geopolitical location, and resilience. Global security and regional/national defense schemes would be strongly affected. An increase in global distrust would spark rising tensions among countries and blocs, that could even lead to the brink of nuclear weapons use by states (if, for instance, a sponsor country is identified). The consequences of such a shocking scenario would include a decrease in states’ self-control, an escalation of present conflicts and the emergence of new ones, accompanied by an increase in military unilateralism and military expenditures. Regarding the economic and financial impacts, a severe global economic depression would rise from the attack, likely lasting for years. Its duration would be strongly dependent on the course of the crisis. The main results of such a crisis would include a 2 percent fall of growth in global Gross Domestic Product, and a 4 percent decline of international trade in the two years following the attack (cf. Figure 3). In the case of developing and less-developed countries, the economic impacts would also include a shortage of high-technology products such as medicines, as well as a fall in foreign direct investment and a severe decline of international humanitarian aid toward low-income countries. We expect an increase of unemployment and poverty in all countries. Global poverty would raise about 4 percent after the attack, which implies that at least 30 million more people would be living in extreme poverty, in addition to the current estimated 767 million. In the area of international relations, we would expect a breakdown of key doctrines involving politics, security, and relations among states. These international tensions could lead to a collapse of the nuclear order as we know it today, with a consequent setback of nuclear disarmament and nonproliferation commitments. In other words, the whole system based on the Nuclear Non- Proliferation Treaty would be put under severe trial. After the attack, there would be a reassessment of existing security doctrines, and a deep review of concepts such as nuclear deterrence, no-firstuse, proportionality, and negative security assurances. Finally, the behavior of governments and individuals would also change radically. Internal chaos fueled by the media and social networks would threaten governance at all levels, with greater impact on those countries with weak institutional frameworks. Social turbulence would emerge in most countries, with consequent attempts by governments to impose restrictions on personal freedoms to preserve order – possibly by declaring a state of siege or state of emergency – and legislation would surely become tougher on human rights. There would also be a significant increase in social fragmentation – with a deepening of antagonistic views, mistrust, and intolerance, both within countries and towards others – and a resurgence of large-scale social movements fostered by ideological interests and easily mobilized through social media.

#### Democracy causes great power nuclear war – democratic states go to warto uphold international law

Muller, director of the Peace Research Institute in Frankfurt, professor of International Relations at Goethe University, 15

(Harald, Democracy, Peace, and Security, Lexington Books pp. 44-49)

My own proposal for solving the problem. developed together with my colleague Jonas Wolff (Müllcr 2004. Muller/Wolff 2006). turns the issue upside down: We do not start with explaining mutual democratic peacefulness, but its opposite. the proven capability of democracies to act aggressively against non-democracies. We note that—apart from self-defense where there is no difference between democracies and non-democracies——democratic states go to war—in contrast to non-democracies—democratic states go to warto uphold international law (or their own interpretation thereof), to prevent anarchy through state failure, to “save strangers” when dictatorships massacre their own people, and to promote democracy. None of these acts is likely to find its target in a democracy. Since the use of force by democracies is hardly possible without public justification, even the rhetorical use of the said reasons will not stand public scrutiny when uttered against a democracy—people will not believe it, War other than for self-defense thus can only be fought by democracies against non-democracies because against a fellow democracy justification would fail. Because whether this is the case or not to a degree that justifies war as the ‘ultimate means” must rely on practical judgments. and practical judgments can differ among even reasonable people. democracies might disagree whether or not the judgment applies in specific cases. Democracies also show variance in that regard due (o a systematic. political-culturally rooted different propensity to judge situations as justifing war or not, and to participate in such wars (Gels et al, 2013). It should also be noted that, given the continuum between autocracy, anocracy and democracy, whether a given state is a democracy or not can be subject to interpretation. and this interpretation may even change over time (Oren 1995, Hayes 2013). The fact is that there are a couple of fairly warlike democracies, and that the democracies participating most frequently in military disputes (apart from the special case of Israel) are, by and large. major powers such as the United States, the United Kingdom. France. or India. This pattern is important to keep in mind when the question of the utility of democratic peace for today ‘s world problems is to be answered. Transnational terrorism, failed states, civil wars and the like dominate the international agenda on war and peace. At the classical level of international relations, in the relationships among major powers. developments arc undcr way which potentially pose an even greater threat than this diverse collection of non-interstate problems presently does. We are living in an era of rather rapid and disturbing power change (Tammcn et al. 2000). The United States are still the leading power of the world with unprecedented militany and economic poer. But others are coming closer: China. India. Braiil and Indonesia, China is at the top of this cohort, All major power changes chal lenge existing structures and thus contain the potential for great disturbance. The leading power may start to fear for its dominant position and take measures to ensure its position at the lop. These actions may frustrate emerging powers and even lead to the perception that their security is endangered. which would motivate counter-measures that further propel a political escala tion spiral. An increasingly focused competition in which a true power change appears increasingly possible. that is. a change of position at the top of the international hierarchy, has an even greater risk potential. If the inherent dangers are not contained—which remains always a possibility major power war may ensue defying all propositions that major war has become obsolete or that nuclear deterrence will prevent this calamity once and for all. Of course, states can grow peacefully into roles of higher responsibility. status and influence on the world stage. There arc no natural laws saving that changes in the world’s power structure must end in war, despite all distur bances and ensuing risks (Rauch 2014). The less conflict an emerging power experiences with established ones, and with peer challengers that emerge simultaneously, the better the chances that the rise will travel a peaceful trajectory. Looking through this lens. thc relations of only one emerging power with the present hegemon appear to be partially conflict-pronc. and seriously so: it concerns the pair China/United States. The Iwo great powers are rivals for preponderance in East and South East Asia and eventually for being the number one at the global level. There is also Chinese resentment stemming from the US role in China’s past as a victim of Western imperialism. On the other hand. China’s authoritarian system of rule and ensuing violations of human and political rights trigger the liberal resentment discussed in the first part of this chapter. which is rooted particularly strongly in US political culture. The Chinese—US relationship is thus thc key to a peaceful. tense or even violent future at the world stage. A small group of major powers. Including the United States and China, is interconnected today by a complex conflict system. China has territorial claims against Japan, South Korea, Vietnam. the Philippines. Brunci. and India which it pursues by a variety of means, not shying away from the limited, small scale usc of militan force in some cases, notably against obviously weaker counterparts (Ellcman ci al. 2012). China’s relation (o wards Japan is the one most burdened by China’s past as a victim of Japanese oppression and related cruelties, and the propcnsit of the conservative part of Japan’s elite to display cavalier attitudes towards this past or even sort of celebrate it (as through visits to the notorious Yasukuni shrine hosting the remnants of war criminals) only adds to anti-Japanese feelings in China (Russia. another great power. also openly pursues a revisionist agenda. as vividly shown in the recent Crimean move, but these territorial ambitions are not part of the most virulent conflict complex in Asia). Territorial claims are always emotionalized and dangerous. Territorial claims by a major power bear particular risks, because threatened countries look for protective allies which are, by necessity, major powers with the capability to project power into the region of concern. The great power claimant and the great power protector then position themselves on the opposite sides of the conflict. A classical constellation of great power conflict results that looks far more traditional than all the talk about post-modern global relations in which state power struggles fade into oblivion would suggest. In the Asian conflict complex that structures the shape of the US—Chinese contest (Foot/Walter 201 1). Japan. South Korea and the Philippines arc for mall allied ith the United Slates. India and Vietnam today entertain rda (ions ith the United States that can be depicted as cordial entente, already include military cooperation, and might move further towards an alliance. depending on deelopmens in Asia. The United States is also a protector of Taiwan. officially a Chinese province, factualh an independent political entity. and the main object of Chinese interest because of the unfinished agenda of national re-unification. Given the enormous asymmetries between China and Taiwan. the latter’s independence depends fully and unambiguously on the US guarantee. Russia and China have a fairly ambivalent relation with each other that is officially called a strategic partnership. Ambiguous as this relationship is, it is predictable that the more the West and Russia are at loggerheads, the closer the Russian—Chinese relations might become. On the other hand. Chi na is the stronger partner and harbors not completely friendly feelings to wards Moscow. as Russia took part in China’s humiliation during the imperi alist period no less than the United States did. Russian fears concerning covert immigration into Eastern Siberia and demographic repercussions and political consequences that might result therefrom add to the uneasiness. China and India arc natural rivals for regional preponderance in Asia (Gilbov/Hcginbotham 2012). Both arc developing rapidly. with China still ahead. Territorial disputes. India’s liospitalit Lo TibeLan exiles including the Dalai Lama. China’s close relation to Pakistan and a growing naval rivalry spanning the Indian Ocean from the Strait of Malacca to Iranian shores (Garofano/Dew 2013) run parallel to rapidly growing economic relations and ostensible efforts lo present the relationship if not as amiable then at least as partner-like. The United States, China, Russia and India even today conduct a multi- pronged nuclear arms race (Fingar 2011: Gangul /Thompson 2011: O’Neill 2013. Müllcr 2014). In this race, conventional components like missile de fense. Intercontinental strike options, space-based assets and the specter of cbcr war play their role, as does the issue of extended dcterrcncc The general US militar’ superiority induces Russia and China to improve their nuclear arsenals, while India tries not to be left too far behind the Chinese in terms of nuclear capability. Pakistan and North Korea ork as potential spoilers at the fringe of this arms race. They are not powerful but thc arc capable of stirring up trouble, whenever they move. In tems of the military constellation, the most disquieting development is the drafting of pre-emptive strategies of a first (most likely conventional) strike by the United States and China, on either side motivated by the per ceived need to keep the upper hand early in a potential clash close to Chinese shores (such as in the context of a Taiwan conflict). China is building up middle-range ballistic capabilities to pre-empt US aircraft carrier groups from coming into striking distance and to desiroy US Air Force assets in Okinawa. while the United States is developing means to neutralize exactly these Chinese capabilities. They are steering towards a hair-trigger security dilemma in which the mutual postures cry out for being used first before the enemy might destroy them (Goldstein 2013: Le Miôre 2012). It cannot be excluded that this whole conflict system might collapse into two opposing blocks one da the spark for a major violent cataclysm could even be lighted by uncontrolled non-state actors inside some of the powers. or—in analogy to the role of Serbia in 1914— a ‘spoiler” state with a particularly idios ncralic agenda. Pakistan. North Korea or Tai an arc con ceivable in this role. Even Japan might be considered, if nationalism in Nippon grows further and seeks confrontation with the old rival China. If anything. this constellation does not look much better than the one which drove Europe into World War I a century ago. and it contains a nuclear component. To trust in the infallibility of nuclear deterrence in this mufti- pronged constellation needs quite a lot of optimism Can democratic peace be helpful in this constellation? Our conflict system includes democracies—the United States, India, Japan. Indonesia and non- democracies such as China. Russia, and Vietnam, but not necessarily on the same side. Should the European theater become connected to the Asian one through continuous US—Russian disputes and a Russian—Chinese entente. defective democracies like Ukraine and Georgia may feature rather importantly as potential triggers for a worsening of relationships. While democracy is useful in excluding certain conflict dyads in the whole complex, such as India and the United States. Japan and the United States. Japan and India. from the risk that they might escalate into a violent conflict, and as democratic peace is pacifying parts of the world. such as South America or Europe. it helps little in disputes between democracies and non-democracies. To the contrary: as discussed above, democracies have a more or less moral-emotional inclination to demonize non-democracies once they dis agree, and to feel a missionary drive to turn them democratic. This might exacerbate the existing, more interest-based conflicts between democracies and non-democracies, and it creates fears in the hearts of autocratic leaders that they might be up for democratization sooner or later. The close inter- democratic relations which democratic peace tends to produce, in turn, only exacerbate these fears as democracies tend to be rich, well organized, and powerful and dispose together of much more potent military capabilities than their potential non-dcnwcratic counterparts. Rather than helping with peace. the inter-democratic consequences of the democratic peace tend to exacerbate the security dilemma which exists between democracies and non-democracics an way. This non-peaceful dark side of democratic peace has escaped the attention of most academic writings on this subject and certainly all political utterances about democratic peace in our political systems. But democratic militancy is the Siamese twin of democratic peace as the Bush Administration unambiguously taught us (Gels et al. 2013: Müllcr 2014b).

### 2NC XT Berjana 1

#### Reliance on adjudication guarantees circumvention- no leadership on BC

Rohit Chopra 20, Commissioner of the Federal Trade Commission, and Lina M. Khan, Academic Fellow at Columbia Law School, Counsel to the Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary and Former Legal Fellow at the Federal Trade Commission, “The Case for "Unfair Methods of Competition" Rulemaking”, University of Chicago Law Review, 87 U. Chi. L. Rev. 357, March 2020, Lexis

I. THE STATUS QUO: AMBIGUOUS, BURDENSOME, AND UNDEMOCRATIC?

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the "rule of reason" standard. The "rule of reason" involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for "speculative, possibly labyrinthine, and unnecessary" analysis and appears to exceed the abilities of even the most capable institutional actors. 1 Generalist judges struggle to identify anticompetitive behavior 2 and to apply complex economic criteria in consistent ways. 3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer. 4 And if a standard isn't administrable, it won't yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms [\*360] into their business decisions. 5Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process--a fundamental principle in our legal system. 6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication "may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies." 7Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades. 8

### 2NC- Soft Power Dead

#### Soft power is dead and has no impact

**Xiang, 21** (Lü Xiang, research fellow on US studies at the Chinese Academy of Social Sciences in Beijing, 1-11-2021, accessed on 7-23-2021, Globaltimes, "Biden faces hard reality of restoring US soft power - Global Times", https://www.globaltimes.cn/page/202101/1212494.shtml) //gene Of course, the decline of US soft power is a long-term process that did not begin during the Trump administration. The waning days of the US started when former president George W. Bush waged the Iraq War in 2003. Even though US' credibility was redeemed to some extent under the presidency of former president Barack Obama, it has been exhausted during the past four years under Donald Trump. The incumbent US government has promoted trade protectionism and unilateralism. It withdrew from several international organizations, tore up a number of bilateral and multilateral agreements and gravely undermined its relationship with its allies and partners. Over the past four years, US polarization has become more evident with social divisions becoming more severe. As a result, Washington's global impact and appeal have remarkably declined. This has posed a huge barrier for it to maintain global hegemonic dominance and alliances. In terms of global influence, the most evident embodiment of US' soft power can be seen in the wear and tear with the loss of its credibility. Since Bush Jr., Washington's credibility began to decline with excuses to invade a country that resulted in huge causalities. The current government behaves with a gangster's logic of pursuing "America First." They have drained the credibility that the US has accumulated since World War II. The international community tends to agree that although the US is changing its president, it still remains unclear what the US will be like after four years, especially for US allies. Even if they rebuild and deepen ties with the US, they will still worry if these achievements will be discarded four years later. Any credible country must ensure consistent policies. If a new government has the potential to break the promise and responsibility reached between former administrations and other countries, the latter will harbor grave doubts toward such a country. The decline of US' soft power has also had serious impacts on people's trust in the US system. At present, the US is suffering from severe partisanship, polarization, social fragmentation, economic stagnation and severe pandemic casualties. Many people in the US now doubt their system. The legitimacy and effectiveness of the US electoral system has been widely questioned, leading to violent attacks. The US used to be the beacon of the free world, but now it is no longer so bright. In this context, US' hope of maintaining its position as a political role model has collapsed. Moreover, US' response to COVID-19 in 2020 is a clear example of the failures of its political system. The deaths of more than 370,000 people attributed to the US government's mishandling of this crisis. But according to the current US system, it's hard to hold anyone accountable. Against this background, Joe Biden has to face high expectations of the international community. Although Biden has yet to take office, he has vowed to repair relations with other major powers and engage actively in multilateral cooperation and responsible global governance. In his article, Nye also believes that if Biden can tame the COVID-19 pandemic, revive the economy and provide a political center that eases polarization, American resilience will once again lead to a recovery of soft power. The hard power of the US is still the strongest in the world. People still expect it to play a positive role in the international community. If Biden lives up to the expectations of the international community, US' international influence will rebound from the bottom. But only to a limited extent. Many analysts around the world believe that it will be difficult for Biden to restore US' pre-Trump relationship and leadership role with the rest of the world. As a country, credibility is its most valuable asset. But everyone knows that the US has suffered a big credibility problem. So it's going to be very difficult for the US to restore its attractiveness and influential power to its allies in the short-, medium- and long-term. Even with Trump out of office, Trumpism still has great influence in US society. Social divisions are hard to reconcile and the attractiveness of the US system will be hard to repair anytime soon. In conclusion, it will be hard for Biden to recover US soft power

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## FTC

#### No Iran nukes – no incentive and latency is more strategic.

Fukushima ‘21 [Mayumi; July 27; Postdoctoral Stanton Nuclear Security Fellow with the nonprofit, nonpartisan RAND Corporation, and formerly served as a career diplomat at the Japanese foreign ministry and more recently as a visiting scholar with the Japanese navy (JMSDF)’s Command and Staff College. She has extensive experience working with U.S. counterparts on various security issues including the North Korean and Iranian nuclear weapons programs; The National Interest, “No-Go Negotiations: Iran May Not Be in a Rush to Get Nuclear Weapons,” <https://nationalinterest.org/feature/no-go-negotiations-iran-may-not-be-rush-get-nuclear-weapons-188540>; KS]

History shows that many countries with advanced nuclear technologies but without nuclear bombs—the so-called nuclear latent states—opt to stay that way, rather than rushing to build nuclear weapons as soon as they can. There are reasons to believe that Iran, too, may choose to remain non-nuclear at least in the foreseeable future, regardless of U.S. decisions on the sanctions and even long after the end of the JCPOA. Thus, U.S. negotiators might be wise to proceed cautiously in considering what incentives to offer Tehran, and not over-reward it for promises not to cross a threshold Iran may not intend to cross anyway.

The early nuclear powers, the United States and the Soviet Union, in particular, built nuclear weapons as quickly as they could. Looking at other states through the lens of U.S. and Soviet experiences, policymakers and practitioners who applaud U.S. nonproliferation policy may implicitly assume every nuclear latent state's desire to get “the absolute weapons” as quickly as possible, absent nonproliferation sanctions and stringent inspection regimes. In the past fifty years, however, many states, large and small, have proceeded down the nuclearization path more gradually than their capabilities would have permitted, and in many cases have paused for years or stopped completely at the stage of nuclear latency. Even some of the states that eventually joined the nuclear club such as Israel and India were unsure about their ultimate goals and spent a considerable amount of time debating the nature of their nuclear programs. After India's 1974 test of a nuclear device, which was not the prototype of a weapon, New Delhi sat on the nuclear fence for sixteen years before it finally began weaponizing in 1989. North Korea did not test its first nuclear bomb until 2006, more than half a century after it launched its nuclear weapons program, even though its nuclear capabilities were so advanced in 1993 that U.S. intelligence analysts estimated that Pyongyang had developed one or two nuclear bombs already. Also, Iran may drag its feet on the path to a bomb. Iranian leaders have seen Japan as a model and have argued that if Japan is allowed to have fuel-cycle technologies and stay in the Treaty on the Non-Proliferation of Nuclear Weapons, then Iran should have that option too.

This slow proliferation can only partly be explained by threats of strict nonproliferation sanctions. Even without them, prolonging nuclear latency may make sense for most potential nuclear powers, politically, economically, and strategically.

Politically, nuclear weapons have not proven to be a broadly useful coercive tool, as it is difficult to credibly threaten the use of such destructive power unless in response to severe security threats. By contrast, stopping short of building nuclear bombs while keeping or upgrading the relevant technologies can buy a state bargaining leverage often disproportionate to its capabilities. This is apparently the reason Iran is currently engaging in nuclear activities that have no civil justification. By threatening to go nuclear, even a minor state that otherwise would be ignored on the world stage can pressure proliferation-averse major powers to offer rewards for staying nuclear-free. Under the 1994 Agreed Framework (PDF), North Korea was rewarded with a promised supply of light-water reactor plants and half a million tons of free heavy oil annually. The value of such rewards was not just material: episodes of Pyongyang's strong negotiating position vis-à-vis great powers have been amply used as a propaganda tool to legitimize the Kim dynasty inside North Korea. Meanwhile, the desire to prevent allies such as Japan and South Korea from developing their own nuclear weapons is often cited as a key reason why the United States should maintain strong security commitments and forward-deployed forces to protect them.

#### Israel won’t strike Iran’s nukes.

Rafizadeh ‘14 [Dr. Majid; October 30; President of the International American Council, Harvard Scholar, Political Scientist, Board Member Harvard International Review and the US-Middle East Chamber of Business and Commerce; Huffington Post, “Will Israel Attack Iran’s Nuclear Installation?” <https://www.huffpost.com/entry/will-israel-attack-irans-_b_5741784?guccounter=1>; KP]

Unintended Consequences: Regional Conflagration

Israel does have the military capability to strike the Islamic Republic’s nuclear installations. Nevertheless, for several reasons, it is very unlikely that Israel will unilaterally carry out strikes against Iran’s nuclear installations.

First of all, Israeli leaders are cognizant of the fact that any strikes aimed at Iran’s nuclear installations will not completely thwart Iran’s nuclear program. The strikes might turn the clock a few years back and postpone the process for Iran to become a nuclear state or build an atomic bomb, but an Israeli attack will give further incentive to Iran to pursue its nuclear ambitions with more determination. Even several senior Israeli security and military officials have admitted that any Israeli attack on Iran will boost Iran’s determination to build a bomb, and will endanger Israel’s own survival.

Second, an external Israeli attack on Iran will rally the Iranian people behind their government for their right of nuclear enrichment. It will also grant the hardliners firmer motive to reach the nuclear threshold with full-fledged speed.

Thirdly, the Islamic Republic will likely decline to cooperate with the international community as well as pull out of the Non-Proliferation Treaty.

As a result, the unintended repercussions and negative consequences of an Israeli attack- such as Iran becoming more determined to accelerate its nuclear program — do outweigh the delay that the strikes might impose on Iran’s nuclear program.

While it might be easy to start a war or carry out strikes, it is almost impossible to know where the war will head afterwards. In case Iran responds militarily, few strikes can turn the region into a conflagration affecting many lives of ordinary civilians, the Gulf (with the price of oil skyrocketing and price of gasoline increasing in Western countries), and impacting the security of other regional countries including Turkey and Saudi Arabia. The war can not only endanger regional security, but also Israel’s own security, and drag in global powers including the United States and Russia.

According to polls, many Israeli citizens are against their country attacking Iran unilaterally.

Finally, although Israeli leaders believe that the Obama administration has not been firm enough in terms of thwarting Iran’s ambition to reach a nuclear threshold, Israel is in fact dependent on the United States when it comes to dealing with Iran’s nuclear program.

## BizCon

### 2nc impact ov

#### Collapse causes terrorism, civil wars, and diversion that go global—outweighs the aff

Liu 18 (Quian, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11/13/2018, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict. The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates. But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies. Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment. The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008. In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929. As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy. If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war. For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun. To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict. According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels. This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis. Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen. Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

### 2nc uq—at antitrust coming

#### Extend Rogerson—plans expansion of common law causes that abrupt shift because it’s a complete departure from current regulations which are distinct from the plan. None of their non-unique cards assume the aff’s sudden change

#### AND there’s no significant antitrust enforcement now

Folio 21 (Joseph, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html)

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast. The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform. Two to go Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017. Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]

### 2nc link extension

#### antitrust applies to all industries, so there’s no way to limit the plan’s scope AND firms and lawyers are risk-averse and think this is true---the result is fear of liability that scales back investment

Nachbar 19 (Thomas, Professor of Law at the University of Virginia School of Law, JD from the University of Chicago Law School, AB in History and Economics from the University of Illinois, “Book Review: Heroes and Villains of Antitrust”, The Antitrust Source, 18-6 Antitrust Src. 1, June 2019, Lexis)

Since Adam Smith, the argument of so-called free-market intellectuals has not been that markets are perfect but rather that they are comparatively better at solving problems than governments. Part of the argument is that, in most cases, market forces will drive a firm that has adopted an inefficient practice to shift to a more efficient one, lest it lose more business than it gains from the practice. But if antitrust law outlawed a practice, there is no potential for the market to correct--the practice once outlawed would remain outlawed. n54 And because antitrust law applies to all industries, a practice outlawed for one firm or industry would be outlawed for all firms in all industries, or be interpreted as such by risk-averse firms and their risk-averse lawyers--not to mention the treble damages that the liable antitrust defendant would have to pay. [FOOTNOTE] n55 See Credit Suisse Sec. (USA) LLC v. Billing, 551 U.S. 264, 284 (2007) ("In sum, an antitrust action in this context is accompanied by a substantial risk of injury to the securities markets and by a diminished need for antitrust enforcement to address anticompetitive conduct."); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 546 (2007) ("It is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.") Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 414 (2004) ("Mistaken inferences and the resulting false condemnations 'are especially costly, because they chill the very conduct the antitrust laws are designed to protect.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)). [END FOOTNOTE]

### 2nc at no spillover

#### Abrupt expansion of antitrust common-law generates major uncertainty that disrupts business planning

Abbott 21 (Alden, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en)

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms. 13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

### 2nc at no perception

#### Yes they periceve it— the possibility that precedent could be applied crumbles confidence and spirals into global decline

El-Erian 17 (MohammedChief Economic Adviser at Allianz, Chairman of US President Barack Obama’s Global Development Council, Former CEO of the Harvard Management Company and Deputy Director at the International Monetary Fund, “America’s Confidence Economy”, Project Syndicate, 3/20/2017, https://www.project-syndicate.org/commentary/trump-market-optimism-economic-growth-by-mohamed-a--el-erian-2017-03

The surge in business and consumer sentiment reflects an assumption that is deeply rooted in the American psyche: that deregulation and tax cuts always unleash transformative pro-growth entrepreneurship. (To some outside the US, it is an assumption that sometimes looks a lot like blind faith.) Of course, sentiment can go in both directions. Just as a “pro-business” stance like Trump’s can boost confidence, perhaps even excessively, the perception that a leader is “anti-business” can cause confidence to fall. Because sentiment can influence actual behavior, these shifts can have far-reaching impacts. In his groundbreaking General Theory of Employment, Interest, and Money, John Maynard Keynes referred to “animal spirits” as “the characteristic of human nature that a large proportion of our positive activities depend on spontaneous optimism, rather than mathematical expectations, whether moral or hedonistic or economic.” Jack Welch, who led General Electric for 20 years, is a case in point: he once stated that many of his own major business decisions had come “straight from the gut,” rather than from analytical models or detailed business forecasts. But sentiment is not always an accurate gauge of actual economic developments and prospects. As the Nobel laureate Robert J. Shiller has shown, optimism can evolve into “irrational exuberance,” whereby investors take asset valuations to levels that are divorced from economic fundamentals. They may be able to keep those valuations inflated for quite a while, but there is only so far that sentiment can take companies and economies. So far, the exuberant reaction of markets to Trump’s victory – all US stock indices have reached multiple record highs – has not been reflected in “hard data.” Moreover, economic forecasters have made only modest upward revisions to their growth projections. It is not surprising that equity investors have responded to the surge in animal spirits by attempting to run ahead of a possible uptick in economic performance. After all, they are in the business of anticipating developments in the real economy and the corporate sector. In any case, they believe that they can quickly reverse their portfolio positions should their expectations change. That is not the case for companies investing in new plants and equipment, which are less likely to change their behavior until announcements begin to be translated into real policies. But the longer they wait, the weaker the stimulus to economic activity and income, and the more consumers must rely on dissaving to translate their positive sentiment into actual purchases of goods and services. It is in this context that the economy awaits a solid timeline for policy announcements to evolve into detailed design and durable implementation. While there is often some delay when political negotiations and trade-offs are involved, in this case, the sense of uncertainty may be heightened by policy-sequencing decisions. By deciding to begin with health-care reform – an inherently complicated and highly divisive issue in US politics – the Trump administration risks losing some of the political goodwill that could be needed to carry out the kinds of fiscal reform that markets are expecting. Even if a bump in the economic data does arrive, it may not last, unless the Trump administration advances policies that enhance longer-term productivity, through, for example, education reform, apprenticeship programs, skills training, and labor retooling. The Trump administration would also have to refrain from pursuing protectionist trade measures that would disrupt the “spaghetti bowl” of cross-border value chains for both producers and consumers. If improved confidence in the US economy does not translate into stronger hard data, unmet expectations for economic growth and corporate earnings could cause financial-market sentiment to slump, fueling market volatility and driving down asset prices. In such a scenario, the US engine could sputter, causing the entire global economy to suffer, especially if these economic challenges prompt the Trump administration to implement protectionist measures.

### 2nc at litigation would be struck down

#### Broadening antitrust creates fear of strategic litigation---that decks business growth, even if meritless

Medeo 18 (Patrick, Judicial Law Clerk at the New Jersey Superior Court, “Potential Negative Impacts of Antitrust Litigation on Businesses”, Rutgers Law School Center for Corporate Law and Governance, 4/6/2018, https://cclg.rutgers.edu/blog/potential-negative-impacts-of-antitrust-litigation-on-businesses-by-patrick-j-medeo/

In the United States, antitrust litigation is not solely a matter of government concern. In fact, antitrust enforcement is a tool strategically used by private parties as part of business operations in the United States. By increasing litigation costs, potential damages, risk of suit, and regulatory oversight costs, antitrust litigation can be an impediment on businesses. Further, fear of litigation and associated costs stifles new product development and production in the United States by creating a high barrier to entry in the form of regulatory costs and significant risk of liability. With the number of antitrust cases rising annually, the negative impact on businesses should be of concern for enforcers especially as the number of private claims grows. Properly applied antitrust laws allow both government and private parties the ability to stop or hinder abuses of market power by participants seeking anticompetitive advantages. A meritorious use of antitrust law by private parties may entail a situation where a cartel of competitors in an industry work together to fix prices, control supplies, and divide market share. In doing so the cartel blocks access to necessary resources for new entrants to the market; through strategic distribution, wholesale, and manufacturing contracts the cartel is able to raise barriers to entry so high that a new entrant would be unable to enter the market or would be unable to effectively compete upon entry. Proper application of antitrust laws by a private party would allow for recourse against the cartel participants and would promote competition in the industry by lowering barriers to entry for new market participants. However, due to the staggering effects that antitrust litigation can have, private parties may also abuse the laws in order to subvert competition. According to an article published by the International Bar Association in 2009, it was noted how “broad procedural and substantive rules providing incentives to litigation produce economic harm” to companies and employees, specifically emphasizing the role played by antitrust cases. The liability is of such a drastic nature that liability policy premiums “increase (s) of 300 or more percent are not uncommon for [European] companies with a US [stock] listing.” In 2016 alone, there were 853 antitrust cases heard in federal courts, a majority of which were brought by private actors. This is an increase of 10.9 percent from 2015 and a 21 percent increase from 2012, where 702 antitrust cases were filed in federal court alone. [1] As of 2007, the average duration of an antitrust case, from filing to completion, was 24.6 months.[2] Such prolonged cases prove expensive for defendants and can create a disincentive to enter the United States Market as the frequency of them increases. A poignant example of prolonged litigation is the LIBOR-Based Financial Instruments Antitrust Litigation. With lawsuits dating back to 2007, the private litigation against numerous banks is still in the process of closing, over a decade later. Collectively, the defendant organizations have paid hundreds of millions and potentially billions of dollars to end litigation, with firms like Citigroup paying individual settlements with private litigants upwards of $100 million.[3] The use of private antitrust litigation may be abused by private litigant as a strategic and anti-competitive tool. Although Antitrust laws are meant to be used to uphold the competitive integrity of US Markets, the laws may also be used by private litigants for anti-competitive ends. This specifically comes into play where non-dominant firms in competitive markets utilize antitrust laws to sue dominant firms. According to a United State Department of Justice paper on the procompetitive and anticompetitive nature of private antitrust litigation, antitrust suits brought by non-dominant firms in competitive markets are more likely to constitute abuses of the law rather than true claims of anticompetitive activity.[4] Further, the use of private antitrust litigation can be highly profitable for nefarious plaintiffs; for instance, not only is the risk of long, complex, and the costly litigation a major deterrent for defendants but it may often lead to profitable settlements for the plaintiffs. In addition to profitable settlements, plaintiffs in private antitrust actions may also be rewarded with easier competition due to fear by defendants of copy-cat lawsuits, this is especially true after a successful government claims. Overall, even where claims may have merit private parties may be less likely to use antitrust laws to impede anticompetitive behavior than use it for their own profit. Antitrust lawsuits are not only costly because of settlements, litigation costs, and other directly monetary outputs; instead, antitrust may also take a toll on opportunity and operational costs ultimately stifling innovation and go-to-market strategies. A prime example is the strategic use of antitrust laws by Digital Equipment Corp. against Intel in 1997. As illustrated in the Department of Justice’s article “The Strategic Abuse of the Antitrust Laws”, a well-timed antitrust allegation can be effective and profitable for the aggressing party. Although suit was never brought, the prospect of a large scale antitrust battle led to a $700 million settlement deal between Digital and Intel, ending months of patent litigation.[5] The settlement came just after a press release by Digital claiming that Intel was bolstering a monopoly in high power micro processing chips, at the same time the FTC began questioning Intel’s dominance in the chip and semi-conductor market. In a highly competitive market Digital was able to nearly stop Intel in its tracks by threatening antitrust litigation and utilizing a Public Relations campaign to draw attention to the company’s market power, founded upon verifiable anticompetitive activity or not. The benefits of this strategy for Digital were not limited to a cash settlement, although the settlement was highly profitable more significant gains were made. In the settlement agreement it was stipulated that Digital would be guaranteed discounts on Intel Pentium chips (used in Digital’s computer products instead of its own competing chips), and continued access to the same Intel Pentium chips. Digital’s personal computers, which incorporated Intel chips, represented nearly 25% of its total revenues. By strategically threatening antitrust litigation Digital was able to slow Intel’s growing and usurping dominance in the high-power chip market, where both parties were competing. In doing so Digital added to its cash reserves while forcing Intel to acquire its chip technology. [6] Ultimately the FTC investigation lead to the finding that Intel had withheld information in the patent litigation process, but Digital’s threat antitrust suit forced a settlement exclusive to them and not benefitting other patent litigants against Intel. Although private parties may, and often do, have a vested interest in utilizing antitrust law to stop anticompetitive behavior strategic uses such as Digital’s are viewed more as abuses. This is because they ultimately do not better competition in the market as a whole, and instead are highly profitable for only the aggressing party. Strategic uses of antitrust such as this appear problematic for businesses. Although they strong arm parties into dealing together, they also hinder development of new products and allow intelligent abusers to systematically restrain their competitors that may otherwise be outperforming other market participants. This may be done regardless of the veracity of their claim. Ultimately, it is the consumer that pays in the form of higher prices, slowed product development and potentially inferior products.

## A1

#### Alt causes---political will, racism, inequality, Trump, sharp power.

Diamond ‘19 — Larry Diamond, PhD, Senior Fellow at the Hoover Institution and at the Freeman Spogli Institute for International Studies at Stanford University., Professor of Sociology and Political Science at Stanford University; (6-11-2019; “Democracy Demotion”; *Foreign Affairs*; https://www.foreignaffairs.com/articles/2019-06-11/democracy-demotion?fa\_package=1124383)

As a result of these blunders and setbacks, Americans lost enthusiasm for democracy promotion. In September 2001, 29 percent of Americans surveyed agreed that democracy promotion should be a top foreign policy priority, according to a poll by the Pew Research Center. That number fell to 18 percent in 2013 and 17 percent in 2018. According to a 2018 survey by Freedom House, the George W. Bush Institute, and the Penn Biden Center, seven in ten Americans still favored U.S. efforts to promote democracy and human rights, but most Americans also expressed wariness of foreign interventions that might drain U.S. resources, as those in Vietnam and Iraq did.

More important, Americans expressed preoccupation with the sorry state of their own democracy, which two-thirds agreed was “getting weaker.” Those surveyed conveyed worry about problems in their society—with big money in politics, racism, and gridlock topping the list. In fact, half of those surveyed said they believed that the United States was in “real danger of becoming a nondemocratic, authoritarian country.”

Pessimism about the state of American democracy has been compounded by economic malaise. Americans were shaken by the 2008 financial crisis, which nearly plunged the world into a depression. Economic inequality, already worse in the United States than in other advanced democracies, is rising. And the American dream has taken a huge hit: only half the children born in the 1980s are earning more than their parents did at their age, whereas when those born in 1940 were around age 30, 92 percent of them earned more than their parents did at their age. Americans have been losing confidence in their own futures, their country’s future, and the ability of their political leaders to do anything about it.

A sense that the United States is in decline pervades—and not just among Americans. The United States’ global standing took a nosedive following President Donald Trump’s inauguration. Among 37 countries surveyed in 2017, the median percentage of those expressing favorable views of the United States fell to 49 percent, from 64 percent at the end of Obama’s presidency. It will be hard for the United States to promote democracy abroad while other countries—and its own citizens—are losing faith in the American model. The United States’ retreat from global leadership is feeding this skepticism in a self-reinforcing downward spiral

GIVING UP THE LEAD

Promoting democracy has never been easy work. U.S. presidents from John F. Kennedy to Ronald Reagan to Obama struggled to find the right balance between the lofty aims of promoting democracy and human rights and the harder imperatives of global statecraft. They all, on occasion, chose to pursue not just pragmatic but even warm relations with autocrats for the sake of securing markets, protecting allies, fighting terrorism, and controlling the spread of weapons of mass destruction. Often, presidents have backed the forces of freedom opportunistically.

Obama did not set out to topple Mubarak, but when the Egyptian people rose up, he chose to back them. Reagan did not foresee needing to abandon loyal U.S. allies in the Philippines and South Korea, but events on the ground left him no other good option. George H. W. Bush probably did not imagine that Reagan’s prediction of the demise of Soviet communism would come true so quickly, but when it did, he expanded democracy and governance assistance programs to support and lock in the sweeping changes.

As the White House’s rhetorical and symbolic emphasis on freedom and democracy has waxed and waned over the past four decades, nonprofits and government agencies, such as the National Endowment for Democracy, the U.S. Agency for International Development, and the State Department’s Bureau of Democracy, Human Rights, and Labor, have taken over the detailed work of democracy assistance. The United States has devoted around $2 billion per year over the last decade to programs promoting democracy abroad—a lot of money, but less than one-tenth of one percent of the total federal budget.

Although the U.S. government should spend more on these efforts, the fundamental problem is not a question of resources. Instead, it is the disconnect between the United States’ admirable efforts to assist democracy, on the one hand, and its diplomatic statements, state visits, and aid flows that often send the opposite message, on the other. Barely a year after he vowed in his second inaugural address to “end tyranny,” George W. Bush welcomed to the White House Azerbaijan’s corrupt, autocratic president, Ilham Aliyev, and uttered not a word of public disapproval about the nature of his rule. On a visit to Ethiopia in 2015, Obama twice called its government “democratically elected,” even though the ruling coalition had held sham elections earlier that same year.

The trap of heaping praise on friendly autocrats while ignoring their abuses is hard to avoid, and all previous presidents have occasionally fallen into it. But most of them at least sought to find a balance, applying pressure when they felt they could and articulating a general principle of support for freedom. That is what has changed since the election of Trump, who doesn’t even pretend to support freedom. Instead, Trump has lovingly embraced such dictators as Putin, the North Korean leader Kim Jong Un, and Crown Prince Mohammed bin Salman of Saudi Arabia, known as MBS, while treating European and other democratic allies with derision and contempt.

Trump’s disregard for democratic norms is contributing to a growing and dangerous sense of license among dictators worldwide. Consider the case of Ugandan President Yoweri Museveni. In early October 2017, I received a distressing e-mail from Nicholas Opiyo, one of Uganda’s leading human rights lawyers. In late September of that year, soldiers had entered Parliament and beaten up members resisting a deeply unpopular constitutional amendment that would allow Museveni, who had then been in power for over 30 years, to rule for life. “It appears to me the whole region is in a steep democratic recession partly because of the loud silence from their western allies,” Opiyo wrote. “In the past, the state was a little reluctant to be this [brutal] and violent and had some measure of shame. It is all gone.”

Autocrats around the world are hearing the same message as Museveni: U.S. scrutiny is over, and they can do what they please, so long as they do not directly cross the United States. Rodrigo Duterte, the president of the Philippines, had surely taken this message to heart as he purged his country’s chief justice, arrested his leading foe in the Senate, and intimidated journalists and other critics of his ostensible war on drugs, a murderous campaign that has caught both political rivals and innocent people in its net. Freed from American pressure, President Abdel Fattah el-Sisi has launched a thorough, brutal crackdown on all forms of opposition and dissent in Egypt, leaving the country more repressive than it was at any time during Mubarak’s 29 years of rule. And MBS has literally gotten away with murder: he faced almost no repercussions after evidence emerged that he had ordered the brutal assassination and dismemberment of the journalist Jamal Khashoggi in the Saudi consulate in Istanbul in October 2018.

The growing assertiveness of two major authoritarian states is also setting back democracy. In the past decade, Russia has rescued the regime of President Bashar al-Assad in Syria, conquered and annexed Crimea, and destabilized eastern Ukraine. China, meanwhile, has been investing extraordinary sums of money and diplomatic energy to project its power and influence around the world, both on land and at sea. A new era of global competition has dawned—not just between rival powers but also between rival ways of thinking about power.

To add to the threat, the competition between democratic governments and authoritarian ones is not symmetrical. China and Russia are seeking to penetrate the institutions of vulnerable countries and compromise them, not through the legitimate use of “soft power” (transparent methods to persuade, attract, and inspire actors abroad) but through “sharp power,” a term introduced by Christopher Walker and Jessica Ludwig of the National Endowment for Democracy. Sharp power involves the use of information warfare and political penetration to limit free expression, distort the political environment, and erode the integrity of civic and political institutions in democratic societies. In the words of Malcolm Turnbull, the former prime minister of Australia, it is “covert, coercive, or corrupting.” In Australia and New Zealand, the Western democracies that have been most affected by these tactics, there is almost no Chinese-language media source that is independent of Beijing, and former officeholders earn lucrative benefits by promoting Chinese interests. Australia has had some success pushing back with legislation. But China’s efforts to penetrate media, civic organizations, and politics meet less resistance in more vulnerable emerging-market democracies, such as Argentina, Ghana, Peru, and South Africa. And China’s influence efforts are now extending to Canada and the United States, threatening the independence and pluralism of Chinese-language media and community associations there, as well as freedom of speech and inquiry within Canadian and American think tanks and universities.

#### Democratic governance is irrelevant.

Doorenspleet 19 – Renske Doorenspleet, Politics Professor at the University of Warwick. [Rethinking the Value of Democracy: A Comparative Perspective, Palgrave Macmillan, p. 98-99]

The first caveat is that none of the studies which have directly tested the democratic peace hypothesis demonstrated that democracy is the only and most important factor when explaining interstate war. Some studies provided evidence that other factors are significant as well, and other studies indicated that alternative explanations are much more powerful, sometimes even showing that the impact of democracy is simply spurious. Geographical and economic factors, for example, play a key role as well, and tend to be far more important, so it is certainly not only democracy which matters. Secondly, these findings are based on quantitative studies, which show correlation but not necessarily causation. While there is a lively ongoing debate about the causal mechanisms, it is still unclear how we can understand and interpret the expected absence of interstate war between democracies. The number of studies which criticize these ideas has increased considerably since the mid-1990s, not just theoretically but particularly empirically as there is no strong evidence to back up the ideas that norms and institutional constraints are the key mechanisms (see Hayes 2011). Moreover, the quest to find the underlying mechanisms should not get priority anyway in future research, in my view, as the statistical evidence for the democratic peace hypotheses is weak over¬all (see first caveat above). Thirdly, democracies are not more peaceful than dictatorships. While there might be some evidence for democratic peace among democratic states (or at least a correlation), democracies are not more peaceful in general. The evidence for a monadic link is not clear, not significant and certainly not robust. There is no clear support for the monadic peace hypothesis which states that interstate war is less likely in democracies compared to dictatorships in general. And democracies do fight with dictatorships—quite a lot. Finally, 'democratizing for peace' seems a dangerous route to take, as democratizing states fight most—more than both democracies and dictatorships. Democracies might not fight with each other, but the coun¬tries that are democratizing are quite war-prone. Moreover, there is convincing evidence that hybrid systems (or semi-democracies) are more likely to be involved in interstate wars, not only compared to countries with higher levels of democracy but also to countries with lower levels of democracy. Democratization can be a very unpredictable and possibly dangerous process, and the findings in this chapter show that democratizing for peace is likely to end in a deadly disaster

## A2

### 2nc- enforcement overstretch

#### XTD 1nc Lachapelle – changing antitrust law collapses enforcement agency credibility bc it’s perceived as a hollow threat. The plan overburdens these agencies harming consumers and creating more backlog making AT enforcement everywhere unsuccessful.

### !- Rollback

**Congress Rollback:**

#### Plan will push Khan’s credibility over the brink – leads to defunding and regulatory rollback

CQ News 21 [Congressional Quarterly News, “FTC Chair Khan's rapid pace seen risking overreach, congressional backlash,” 08/06/21, lexis, JCR]

Federal Trade Commission Chair Lina Khan is risking the perception of overreach as she tries to make dramatic changes at the agency amid an ongoing public debate and internal clashes, observers said. Some of her recent moves, which are already raising questions on Capitol Hill among Republicans, could complicate the outlook for measures to beef up the FTC's authority. "She has to be careful about going too far so that she doesn't lose her support and embolden the critics of the FTC in Congress," Seth Bloom, president and founder of Bloom Strategic Counsel PLLC and a former Democratic aide for the Senate Judiciary's Antitrust Subcommittee, told CQ Roll Call. Khan, who is viewed as one of the most progressive FTC chairs in decades, was sworn in on June 15. Since then, the commission has voted on sweeping changes, including the repeal of a major competition policy statement that was put in place on a bipartisan basis during the Obama administration. Critics, including the commission's Republicans, are voicing concerns that Khan is dismantling old policies at an alarming rate, while ignoring traditional agency procedures along the way. "I think it is the stifling of staff perspectives that is most dramatic," Republican Commissioner Christine Wilson said in an interview. "Under prior chairs, dating back for decades, commissioners have been able to get comprehensive, detailed analysis from staff about every recommendation that is coming before the commission and about every matter on which the commission votes. The flow of information has been dialed back to zero under Chair Khan." The public tension at the FTC is at odds with the agency's decades-long tradition of avoiding open political battles and working behind the scenes to achieve consensus on most matters, according to observers. "I think it's fair to say the FTC has operated as a bipartisan, consensus-based agency pretty much for the last 40 years," said Stephen Calkins, a law professor at Wayne State University in Michigan and a former FTC general counsel in the Clinton administration. "The current chair and majority would probably say the commission has been making mistakes and doing the wrong things for those 40 years." In contrast with the approach taken in recent weeks, the FTC normally takes time in its decision making, with a significant amount of internal deliberation, according to James Fishkin, an antitrust partner at Dechert LLP. "In reality, there's a lot of back and forth and internal discussion going on behind the scenes," said Fishkin, who previously worked as a staff attorney in the FTC's Competition Bureau. The commission has five seats: three for the majority party and two for the minority. Besides Khan, the current Democrats are Rebecca Slaughter and Rohit Chopra, who has been nominated by President Joe Biden to become head of the Consumer Financial Protection Bureau and is expected to leave. Wilson's Republican colleague is Noah Phillips. Much of the agency's day-to-day work is handled by career staff, most notably in the bureaus of Consumer Protection and Competition. Shortly after Khan took over, the FTC launched a series of open meetings, with the goal of making the agency more transparent. Previously, the commission voted on policy items behind closed doors. While Khan has been praised for seeking to open up the work of the commission to the public, some have criticized the way the meetings have been conducted. So far, two such meetings have been held virtually. In both cases, commissioners were asked to vote on major items with little advanced notice or planning, according to Wilson. She also said the meetings lacked any meaningful dialogue. Staff was excluded and commissioners took turns reading prepared statements. The first meeting, on July 1, included a vote to rescind a 2015 policy statement that restricted the agency's authority to prohibit unfair methods of competition under Section 5 of the FTC Act. It was a 3-2 vote, with Wilson and Phillips dissenting. On July 21, the commission voted, also along party lines, to rescind a merger policy statement from the Clinton administration. The 1995 policy had ended the practice of routinely requiring companies to obtain prior approval for acquisitions in certain cases. "The rescission of these statements without providing guidance about where the commission will head provides an irresponsible lack of clarity to the business community about the types of conduct that are lawful and unlawful," Wilson told CQ Roll Call. Bipartisan pledge Last week, during her first appearance on Capitol Hill as FTC chair, Khan pledged to work with her fellow commissioners in a bipartisan fashion. "I think this is a really fascinating moment for a new, emerging bipartisan consensus, especially around some of the concerns relating to concentration of economic power in the digital markets," she said at the hearing, which was convened by the House Energy and Commerce Subcommittee on Consumer Protection and Commerce. "I'm always keen to find areas of shared agreement with my colleagues." She said the new open meetings are "still very early in the process," and the agency is "always thinking about ways that we can improve our processes going forward." The hearing included testimony from all five commissioners. Republicans used it as an opportunity to air some of their grievances over how the agency is currently being run, with Wilson calling it an "abrupt departure from regular order." Similar concerns were raised by GOP members of the subcommitee. Five Senate Republicans have written to Khan, asking her to respond to several questions about recent events at the FTC. The senators, including Marsha Blackburn of Tennessee and John Cornyn of Texas, said they were concerned about the level of openness and transparency at the agency. "In particular, it appears that unprecedented steps have been taken to empower the office of the FTC chair at the expense of the bipartisan, consensus-based decision-making that characterized the FTC under prior administrations," they said. The lawmakers asked Khan to explain why the commission voted to rescind the 2015 policy statement without a public comment period. They also asked her to address a report that her chief of staff, Jen Howard, has internally issued a moratorium on public events and press outreach -- ostensibly, so that staff can focus on the agency's heavy workload. The revelation has triggered concerns that staff is being silenced amid a period of turmoil at the agency. The scrutiny comes as Khan seeks increased resources and new authorities from Congress that can help her to carry out an aggressive agenda. One of the agency's most urgent priorities is getting Congress to restore its ability to obtain monetary restitution for victims of consumer protection and antitrust violations, which was struck down by a U.S. Supreme Court ruling. On July 20, the House narrowly passed a bill (HR 2668) that would give the commission explicit monetary restitution authority. Republicans said the measure, which received only two votes from their side of the aisle, lacked provisions to prevent regulatory overreach. The legislation now awaits action in the Senate, where more Republican support will be needed to reach the 60-vote threshold for overcoming a filibuster threat. "I think Chair Khan risks losing support in the Senate if Republicans perceive her as overly aggressive and if they're uncomfortable with the kind of reforms that she's pushing through," Bloom said. While public disagreement at the FTC isn't unprecedented, the current situation is one of the most extreme examples in modern history, according to observers. "You have go back 40 years to when Ronald Reagan became president," Calkins said. "There was a pretty sharp change in the doctrinal views of the commission under its new chair, Jim Miller, compared with Michael Pertschuk, the previous chair." Pertschuk was one of the most liberal chairs in FTC history, and Miller was one of the most conservative, according to Calkins. When Miller arrived, Pertschuk stayed on as a commissioner, serving in the minority. The two constantly clashed. Miller's agenda was consistent with the overall de-regulatory focus of the Reagan administration. It also followed a period when the FTC came under fire for what was perceived on Capitol Hill as excessive regulatory activity. The agency's powers were curbed by Congress as a result.

#### Kahn is pushing the limits of FTC authority- the question is how far it will go- we are at the brink

Wright 21 [Joshua, Executive Dir of the Global Antitrust Institute, Univ Prof at George Mason, FTC commissioner under the Obama admin, “Lina Khan Is Icarus at the FTC,” *Wall Street Journal*, 07/13/21, <https://www.wsj.com/articles/lina-khan-ftc-monopoly-big-tech-11626108008>, accessed 09/01/21, JCR]

It’s a touch ominous when a bureaucrat begins her tenure by sending bipartisan procedural safeguards to the paper shredder. Federal Trade Commission Chairman Lina Khan wasted no time making confetti of the guardrails at the FTC, including the Obama administration policy statement placing minimal limits on how the agency could use its theretofore undefined power to police “unfair methods of competition.” Shredding the statement clears the way for Ms. Khan’s attempt to remake antitrust law in her image (“Lina Khan’s Power Grab at the FTC,” Review & Outlook, July 6). With the announcement of a global gag order on FTC staff, Ms. Khan has made it clear the FTC will now speak with one voice—hers. All that has been overshadowed by an executive order aimed at competition and loaded with goodies, good intentions, new regulatory regimes and a blissful ignorance of unintended consequences (“Joe Biden, 20th Century Trustbuster,” Review & Outlook, July 10). Some of its pronouncements, like occupational-licensing reform, are to the good. But the FTC’s competition authority is about to become a free-for-all for the Biden administration to reshape the economy. One wonders how the Republicans going along with all this to “get Big Tech” are feeling right now; I’m guessing “played.” If not, they’ll catch up soon enough. Imagining the FTC as Icarus flying without the constraints of history, economics or law is a fun thought experiment, but we’ve been here before. Ms. Khan’s initial steps are indicative of a regulatory overreach that will end with the FTC’s wings melting in the courts. This path does not lead to incremental, much less radical, change. I predict early headlines that appease a rabid base, frustration for FTC staff and a new, volatile partisanship at the agency, but actual results that leave unsatisfied the progressives aching for radical change.

### 2NC XT Berjana 1

#### Antitrust law incapable of preventing consolidation

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.145-8, JCR]

Analogous to the poker player who commands a disproportionate financial advantage over his opponents and has the capacity to bankrupt his rivals, a monopoly, according to Karl Marx, interferes with the normal expression of value.2 Marx theorized that capitalism amidst its competitive3 splendor and glory4 has a natural tendency to become a global monopoly.5 For Marx, “the overwhelming drive for capital accumulation” is a basic tenet of capitalism.6 Additionally, “competition [contains] the seed of future centralization,”7 or rather, competition contains the seed for future capital accumulation that is achieved through “mergers and acquisitions.”8 This capital accumulation then results in the demise “of many small firms,” the cannibalism of other competitors, and the ultimate “evolution of monopoly power.”9 During Marx’s time,10 however, antitrust laws did not exist,11and his theory was not premised upon the existence of government regulation that attempted to hamper the formation of monopolies.12 Considering this, it is tempting to hastily conclude that Marx’s theory is, therefore, no longer applicable to countries that have antitrust laws. Marx’s basic premise is that competition results in the “growing accumulation of capital.”13 The inevitable formation of monopolies cannot be discounted, however, and is still applicable even with the existence of antitrust laws. The existence of antitrust laws merely creates a slight twist in Marx’s formulation. To put it more precisely, although antitrust laws can curb the formation of monopolies, they are insufficient in preventing the accumulation of power in the hands of a few, or rather, the formation of oligopolies.14 Antitrust laws fail to prevent competition from cannibalizing itself, because antitrust laws preserve, rather than completely extinguish the competitive process.15 The increase in mergers and acquisitions16 activities around the world in various sectors illustrates this phenomenon.17 A firm’s drive to attain a competitive edge in a capitalist society, which initially fueled the increase in competition, has led it to combine forces with competitors.18 Antitrust laws have been inadequate in preventing such consolidation of large firms leading to the concentration of capital in the hands of a few and, eventually, extinguishing competition.