## OFF

### OFF

T Courts

#### Courts cannot create “antitrust law” and cannot “increase prohibitions”

Kalbfleisch 61 – Kalbfleisch, District Court judge. [Paul M. Harrod Co. v. A. B. Dick Co., 194 F. Supp. 502 (N.D. Ohio 1961)]//babcii

Defendant asserts that the term ‘antitrust laws,’ as used in the above section and as defined in 15 U.S.C.A. § 12, does not include a judgment or decree entered in connection with an antitrust case filed by the Government. Plaintiff, on the other hand, asserts that ‘the violation of the earlier decree of this court in itself gives rise to an independent cause of action under Section 4 of the Clayton Act.’ 15 U.S.C.A. § 15. Plaintiff's Brief, p. 7. Plaintiff concedes that ‘as far as he has been able to ascertain, this contention raises issues which have never before been decided by any appellate court.’ Plaintiff's Brief, p. 5. In Nashville Milk Co. v. Carnation Co., 1958, 355 U.S. 373, 78 S.Ct. 352, 2 L.Ed.2d 340, the Supreme Court held that the Robinson-Patman Act, 15 U.S.C.A. §§ 13-13b, 21a, was not included among the ‘antitrust laws' defined in Section 1 of the Clayton Act (15 U.S.C.A. § 12) and that ‘the definition contained in § 1 of the Clayton Act is exclusive.’ Id., 355 U.S. at page 376, 78 S.Ct. at page 354. The definition of ‘antitrust laws' in 15 U.S.C.A. § 12, clearly embraces only the statutes described therein. Even without such a definition the term ‘antitrust laws' could not be construed as pertaining to a judgment or decree entered by a court in connection with an antitrust case filed by the Government. Such decrees do not necessarily reflect the **prohibitions** of the antitrust laws but may, by their terms, seek to dissipate the effects of the past conduct of the parties and, to this end, frequently enjoin performance of acts lawful in themselves. To permit a private party to recover damages for violation of any provision of such a decree is so obviously beyond the scope of the term ‘antitrust laws,’ as used in the statute, as to require no further discussion. Defendant's motion to dismiss that part of the complaint based on alleged violations of the 1948 consent decree in United States v. A.B. Dick Company will be sustained.

#### limits and grounds --- Multiplies the # of aff’s by 2, removes any core checks on small aff’s, and allows the aff to circumvent any public backlash

### OFF

T TPS

#### Topical affs must increase prohibitions on the entire economy:

#### 1---“The” before a noun means whole

Webster’s 5 (Merriam Webster’s Online Dictionary, [http://www.m-w.com/cgi-bin/dictionary](about:blank))

The

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### 2---“Private Sector” means all

Senate Manual 11 (Senate Document No. 112-1)//babcii

The term ``private sector'' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.112 S. Doc. 1

#### Vote NEG for limits and grounds --- Subsets explodes the topic to thousands of affs, and removes core controversy

### OFF

DPA CP

#### The United States Federal Government should apply antitrust laws to cover the National College Athletics Association, removing the amateurism exemption only if the president determines it does not pose a direct threat to national defense or preparedness programs

#### The counterplan maintains DPA authority --- the plan eliminates it.

Michael H. Cecire and Heidi M. Peters 20. Michael H. Cecire, Analyst in Intergovernmental Relations and Economic Development Policy. Heidi M. Peters, Analyst in U.S. Defense Acquisition Policy. “The Defense Production Act of 1950: History, Authorities, and Considerations for Congress” Updated March 2, 2020. https://www.everycrsreport.com/reports/R43767.html

Authorities Under Title VII of the DPA Title VII of the DPA contains various provisions that clarify how DPA authorities should and can be used, as well as additional presidential authorities. Some significant provisions of Title VII are summarized below. Special Preference for Small Businesses Two provisions in the DPA direct the President to accord special preference to small businesses when issuing contracts under DPA authorities. Section 701 reiterates89 and expands upon a requirement in Section 108 of Title I directing the President to "accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor."90 Definitions of Key Terms in the DPA The DPA statute historically has included a section of definitions.91 Though national defense is perhaps the most important term, there are additional definitions provided both in current law and in E.O. 13603.92 Over time, the list of definitions provided in both the law and implementing executive orders has been added to and edited, most recently in 2009, when Congress added a definition for homeland security93 to place it within the context of national defense.94 Industrial Base Assessments To appropriately use numerous authorities of the DPA, especially Title III authorities, the President may require a detailed understanding of current domestic industrial capabilities and therefore need to obtain extensive information from private industries. Under Section 705 of the DPA, the President may "by regulation, subpoena, or otherwise obtain such information from ... any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act [the DPA]."95 This authority is delegated to the Secretary of Commerce in E.O. 13603.96 Though this authority has many potential implications and uses, it is most commonly associated with what the DOC's Bureau of Industry and Security calls "industrial base assessments."97 These assessments are often conducted in coordination with other federal agencies and the private sector to "monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities."98 The statute requires the President to issue regulations to insure that the authority is used only after "the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency."99 This regulation has been issued by DOC.100 Voluntary Agreements Normally, voluntary agreements or plans of action between competing private industry interests could be subject to legal sanction under anti-trust statutes or contract law. Title VII of the DPA authorizes the President to "consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense."101 The President must determine that a "condition exists which may pose a direct threat to the national defense or its preparedness programs"102 prior to engaging in the consultation process. Following the consultation process, the President or presidential delegate may approve and implement the agreement or plan of action.103 Parties entering into such voluntary agreements are afforded a special legal defense if their actions within that agreement would otherwise violate antitrust or contract laws.104 Historically, the National Infrastructure Advisory Council noted that the voluntary agreement authority has been used to "enable companies to cooperate in weapons manufacture, solving production problems and standardizing designs, specifications and processes," among other examples.105 It could also be used, for example, to develop a plan of action with private industry for the repair and reconstruction of major critical infrastructure systems following a domestic disaster. The authority to establish a voluntary agreement has been delegated to the head of any federal department or agency otherwise delegated authority under any other part of E.O. 13603.106 Thus, the authority could be potentially used by a large group of federal departments and agencies. Use of these voluntary agreements is tracked by the Secretary of Homeland Security,107 who is tasked under E.O. 13603 with issuing regulations that are required by law on the "standards and procedures by which voluntary agreements and plans of action may be developed and carried out."108 The Federal Emergency Management Agency (FEMA), which at the time was an independent agency and tasked with these responsibilities under the DPA, issued regulations in 1981 to fulfill this requirement.109 FEMA is now a part of DHS, and those regulations remain in effect. The Maritime Administration (MARAD) of the U.S. Department of Transportation manages the only currently established voluntary agreements in the federal government, the Voluntary Intermodal Sealift Agreement (commonly referred to as "VISA") and the Voluntary Tanker Agreement. These programs are maintained in partnership with the U.S. Transportation Command of DOD, and have been established to ensure that the maritime industry can respond to the rapid mobilization, deployment, and transportation requirements of DOD. Voluntary participants from the maritime industry are solicited to join the agreements annually.110 Nucleus Executive Reserve Title VII of the DPA authorizes the President to establish a volunteer body of industry executives, the "Nucleus Executive Reserve," or more frequently called the National Defense Executive Reserve (NDER).111 The NDER would be a pool of individuals with recognized expertise from various segments of the private sector and from government (except full-time federal employees). These individuals would be brought together for training in executive positions within the federal government in the event of an emergency that requires their employment. The historic concept of the NDER has been used as a means of improving the war mobilization and productivity of industries.112 The head of any governmental department or agency may establish a unit of the NDER and train its members.113 No NDER unit is currently active, though the statute and E.O. 13603 still provide for this possibility. Units may be activated only when the Secretary of Homeland Security declares in writing that "an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency."114 Authorization of Appropriations, as amended by P.L. 113-72 Appropriations for the purpose of the DPA are authorized by Section 711 of Title VII.115 Prior to the P.L. 113-172, "such sums as necessary" were authorized to be appropriated. This has been replaced by a specific authorization for an appropriation of $133 million per fiscal year and each fiscal year thereafter, starting in FY2015, to carry out the provisions and purposes of the Defense Production Act.116 Table 1 shows that the annual average appropriation to the DPA Fund between FY2010 and FY2019 was $109.1 million,117 with a high of $223.5 million in FY2013 and a low of $34.3 million in FY2011. Monies in the DPA Fund are available until expended, so annual appropriations may carry over from year to year if not expended. Recently, the only regular annual appropriation for the purposes of the DPA has been made in the DOD appropriations bill, though appropriations could be made in other bills directly to the DPA Fund (or transferred from other appropriations). Committee on Foreign Investment in the United States118 The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. It reviews foreign investment transactions to determine if (1) they threaten to impair U.S. national security; (2) the foreign investor is controlled by a foreign government; or (3) the transaction could affect homeland security or would result in control of any critical infrastructure that could impair the national security. The President has the authority to block proposed or pending foreign investment transactions that threaten to impair the national security. CFIUS initially was created and operated through a series of Executive Orders.119 In 1988, Congress passed the "Exon-Florio" amendment to the DPA, granting the President authority to review certain corporate mergers, acquisitions, and takeovers, and to investigate the potential impact on national security of such actions.120 This amendment codified the CFIUS review process due in large part to concerns over acquisitions of U.S. defense-related firms by Japanese investors. In 2007, amid growing concerns over the proposed foreign purchase of commercial operations of six U.S. ports, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49) to create CFIUS in statute. On August 13, 2018, President Trump signed into law new rules governing national security reviews of foreign investment, known as the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-235).121 FIRRMA amends several aspects of the CFIUS review process under Section 721 of the DPA.122 Notably, it expands the scope of transactions that fall under CFIUS' jurisdiction. It maintains core components of the current CFIUS process for evaluating proposed or pending investments in U.S. firms, but increases the allowable time for reviews and investigations. Upon receiving written notification of a proposed acquisition, merger, or takeover of a U.S. firm by a foreign investor, the CFIUS process can proceed potentially through three steps: (1) a 45-day national security review; (2) a 45-day maximum national security investigation (with an option for a 15-day extension for "extraordinary circumstances"); and (3) a 15-day maximum Presidential determination. The President can exercise his authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he finds that (1) "credible evidence" exists that the foreign investor might take action that threatens to impair the national security; and (2) no other laws provide adequate and appropriate authority for the President to protect national security. FIRRMA shifts the filing requirement for foreign investors from voluntary to mandatory in certain cases, and provides a two-track method for reviewing certain investment transactions. Other changes mandated by FIRRMA would provide more resources for CFIUS, add new reporting requirements, and reform export controls. Termination of the Act Title VII of the DPA also includes a "sunset" clause for the majority of the DPA authorities. All DPA authorities in Titles I, III, and VII have a termination date, with the exception of four sections.123 As explained in Section 717 of the DPA, the sections that are exempt from termination are 50 U.S.C. §4514, Section 104 of the DPA that prohibits both the imposition of wage or price controls without prior congressional authorization and the mandatory compliance of any private person to assist in the production of chemical or biological warfare capabilities; 50 U.S.C. §4557, Section 707 of the DPA that grants persons limited immunity from liability for complying with DPA-authorized regulations; 50 U.S.C. §4558, Section 708 of the DPA that provides for the establishment of voluntary agreements; and 50 U.S.C. §4565, Section 721 of the DPA, the so-called Exon-Florio Amendment, that gives the President and CFIUS review authority over certain corporate acquisition activities. P.L. 115-232 extended the termination date of Section 717 from September 30, 2019, to September 30, 2025. In addition, Section 717(c) provides that any termination of sections of the DPA "shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act" prior to its termination. This means, for instance, that prioritized contracts or Section 303 projects created with DPA authorities prior to September 30, 2025, would still be executed until completion even if the DPA is not reauthorized. Similarly, the statute specifies that the authority to investigate, subpoena, and otherwise collect information necessary to administer the provisions of the act, as provided by Section 705 of the DPA, will not expire until two years after the termination of the DPA.124 For a chronology of all laws reauthorizing the DPA since inception, see Table A-4. Defense Production Act Committee The Defense Production Act Committee (DPAC) is an interagency body originally established by the 2009 reauthorization of the DPA.125 Originally, the DPAC was created to advise the President on the effective use of the full scope of authorities of the DPA. Now, the law requires DPAC to be centrally focused on the priorities and allocations authorities of Title I of the DPA. The statute assigns membership in the DPAC to the head of each federal agency delegated DPA authorities, as well as the Chairperson of the Council of Economic Advisors. A full list of the members of the DPAC is included in E.O. 13603.126 As stipulated in law, the Chairperson of the DPAC is to be the "head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this Act."127 As currently established in E.O. 13603 delegations, the Secretary of Homeland Security is the chair-designate, but the language of the law could allow the President to appoint another Secretary with revision to the E.O.128 The Chairperson of the DPAC is also required to appoint one full-time employee of the federal government to coordinate all the activities of the DPAC. Congress has exempted the DPAC from the requirements of the Federal Advisory Committee Act.129 The DPAC has annual reporting requirements relating to the Title I priority and allocation authority, and is also required to include updated copies of Title I-related rules in its report. The annual report also contains, among other items, a "description of the contingency planning ... for events that might require the use of the priorities and allocations authorities" and "recommendations for legislative actions, as appropriate, to support the effective use" of the Title I authorities.130 The DPAC report is provided to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services. Impact of Offsets Report Offsets are industrial compensation practices that foreign governments or companies require of U.S. firms as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 U.S.C. §2751, et seq.) and the International Traffic in Arms Regulations (22 C.F.R. §§120-130). In the defense trade, such industrial compensation can include mandatory co-production, licensed production, subcontractor production, technology transfer, and foreign investment. The Secretary of Commerce is required by law to prepare and to transmit to the appropriate congressional committees an annual report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade. Specifically, the report discusses "offsets" in the government or commercial sales of defense materials.131 Considerations for Congress Enhance Oversight Expand Reporting or Notification Requirements Congress may consider whether to add more extensive notification and reporting requirements on the use of all or specific authorities in the DPA. These reporting or notification requirements could be added to the existing law, or could be included in conference or committee reports accompanying germane legislation, such as appropriations bills or the National Defense Authorization Act. Additional reporting or notification requirements could involve formal notification of Congress prior to or after the use of certain authorities under specific circumstances. For example, Congress may consider whether to require the President to notify Congress (or the oversight committees) when the priorities and allocations authority is used on a contract valued above a threshold dollar amount.132 Congress might also consider expanding the existing reporting requirements of the DPAC, to include semi-annual updates on the recent use of authorities or explanations about controversial determinations made by the President. Existing requirements could also be expanded from notifying/reporting to the committees of jurisdiction to the Congress as a whole, or to include other interested committees, such as the House and Senate Armed Services Committees. Enforce and Revise Rulemaking Requirements Congress may consider reviewing the agencies' compliance with existing rulemaking requirements. A rulemaking requirement exists for the voluntary agreement authority in Title VII that has been completed by DHS, but it has not been updated since 1981 and may be in need of an update given changes to the authority and government reorganizations since that date.133 One of the agencies responsible for issuing a rulemaking on the use of Title I authorities has yet to do so. Congress may also consider potentially expanding regulatory requirements for other authorities included in the DPA. For example, Congress may consider whether the President should promulgate rules establishing standards and procedures for the use of all or certain Title III authorities. In addition to formalizing the executive branch's policies and procedures for using DPA authorities, these regulations could also serve an important function by offering an opportunity for private citizens and industry to comment on and understand the impact of DPA authorities on their personal interests. Broaden Committee Oversight Jurisdiction Since its enactment, the House Committee on Financial Services, the Senate Committee on Banking, Housing, and Urban Affairs, and their predecessors have exercised legislative oversight of the Defense Production Act. The statutory authorities granted in the various titles have been vested in the President, who has delegated some of these authorities to various agency officials through E.O. 13603. As an example of the scope of delegations, the membership of the Defense Production Act Committee (DPAC), created in 2009 and amended in 2014, includes the Secretaries of Agriculture, Commerce, Defense, Energy, Labor, Health and Human Services, Homeland Security, the Interior, Transportation, the Treasury, and State; the Attorney General; the Administrators of the National Aeronautics and Space Administration and of General Services, the Chair of the Council of Economic Advisers; and the Directors of the Central Intelligence Agency and National Intelligence. In order to complement existing oversight, given the number of agencies that currently use or could potentially use the array of DPA authorities to support national defense missions, Congress may consider reestablishing a select committee with a purpose similar to the former Joint Committee on Defense Production.134 As an alternative to the creation of a new committee, Congress may consider formally broadening DPA oversight responsibilities to include all relevant standing committees when developing its committee oversight plan. Should DPA oversight be broadened, Congress might consider ways to enhance inter-committee communication and coordination of its related activities. This coordination could include periodic meetings to prepare for oversight hearings or ensuring that DPA-related communications from agencies are shared appropriately. Finally, because the DPA was enacted at a time when the organization and rules of both chambers were markedly different to current practice, Congress may consider the joint referral of proposed DPA-related legislation to the appropriate oversight committees. Amending the Defense Production Act of 1950 While the act in its current form may remain in force until September 30, 2025, the legislature could amend the DPA at any time to extend, expand, restrict, or otherwise clarify the powers it grants to the President. For example, Congress could eliminate certain authorities altogether. Likewise, Congress could expand the DPA to include new authorities to address novel threats to the national defense. For example, Congress may consider creating new authorities to address specific concerns relating to production and security of emerging technologies necessary for the national defense.

#### Key to pandemic response.

J. Mark Gidley et al. 20. J. Mark Gidley chairs the White & Case Global Antitrust/Competition practice. Martin M. Toto and Sean Sigillito. “A Novel Antitrust Defense for COVID-19 Agreements: Section 708 of the Defense Production Act” <https://www.whitecase.com/sites/default/files/2020-04/novel-antitrust-defense-covid-19-agreements-section-708-defense-production-act.pdf>

There is a dire need for the assistance of private industry in developing vaccines and treatments for the SARS-CoV-2 virus, and for the manufacture and distribution of medical and other supplies to aid in the United States’ response to the COVID-19 health emergency. The Government’s recent actions indicate a desire to allow private sector companies to work together to do so quickly.

While many of the needs arising from the ongoing emergency focus specifically on medical supplies, the President’s delegation of Section 708 authority to the DHS as well as HHS potentially opens the door to voluntary agreements within broader sectors of the US economy. Under the right circumstances, and if the business combination could garner the governmental sponsor needed for the voluntary agreement, invoking the Defense Production Act’s antitrust relief provision through the enactment of voluntary agreements could allow for a more robust response to the COVID-19 pandemic.

#### Disease causes extinction and turns every impact --- it’s an *IMPACT MAGNFIER*

Dennis Pamlin & Stuart Armstrong 15. \*Executive Project Manager Global Risks, Global Challenges Foundation. \*\*James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford. February 2015, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, p.30-93. https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the **risk of a civilisation collapse** would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

### OFF

Regs CP

#### The United States federal government should increase prohibitions on the private sector without using anti-trust law by establish a purpose-built competition agency comprised of industry and subject matters experts that establish basic rules of conduct, including at least regulation of the National College Athletics Association

#### CP solves --- establishes a new agency with full authority and acts fast

Lohr, 20 (Steve Lohr, Pulitzer Prize for Explanatory Reporting, a foreign correspondent for a decade, , 10-22-2020, accessed on 5-16-2021, The New York Times, "Forget Antitrust Laws. To Limit Tech, Some Say a New Regulator Is Needed.", <https://www.nytimes.com/2020/10/22/technology/antitrust-laws-tech-new-regulator.html)//Babcii>

But even as the [Justice Department filed an antitrust suit against Google](https://www.nytimes.com/2020/10/20/technology/google-antitrust.html) on Tuesday for unlawfully maintaining a monopoly in search and search advertising, a growing number of legal experts and economists have started questioning whether traditional antitrust is up to the task of addressing the competitive concerns raised by today’s digital behemoths. Further help, they said, is needed.

Antitrust cases typically proceed at the stately pace of the courts, with trials and appeals that can drag on for years. Those delays, the legal experts and economists said, would give Google, Facebook, Amazon and Apple a free hand to become even more entrenched in the markets they dominate.

A more rapid-response approach is required, they said. One solution: a specialist regulator that would focus on the major tech companies. It would establish and enforce a set of basic rules of conduct, which would include not allowing the companies to favor their own services, exclude competitors or acquire emerging rivals and require them to permit competitors access to their platforms and data on reasonable terms.

The British government has already said it would create a digital markets unit, with calls for a Big Tech regulator to also be introduced in the European Union and in Australia. In the United States, recommendations for a digital markets regulator have also been made in expert reports and in congressional testimony. It could be **a separate agency** or perhaps a digital division inside the Federal Trade Commission.

Significantly, the leading proponents of this path in the United States are mainstream antitrust experts and economists rather than break-’em-up firebrands. Jason Furman, a professor at Harvard University and chair of the Council of Economic Advisers in the Obama administration, led [an advisory group to the British government](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf) that recommended the creation of a digital markets unit in 2019.

Breaking up the big tech companies, Mr. Furman said, is a bad idea because that would risk losing some of the consumer benefits these digital utilities undeniably deliver. A regulator is necessary to police digital markets and the behavior of the tech giants, he said.

“I’m a small ‘c’ conservative, and I’m not a fan of regulation generally,” Mr. Furman said. “But it’s needed in this space.”

Regulators that focus on specific sectors of the economy are common in the United States. For financial markets, there is the Securities and Exchange Commission; for airlines, the Federal Aviation Administration; for pharmaceuticals, the Food and Drug Administration; for telecommunications, the Federal Communications Commission; and so on.

There is also precedent for picking out a handful of big companies for special treatment. In banking, the biggest banks with the most customers and loans are classified as “systemically important financial institutions” and subject to more stringent scrutiny.

Several supporters of a new tech regulator were officials in the Obama administration, which was known for being friendly to Silicon Valley. But the advocates said that experience — as well as the conservative, pro-big business drift of court rulings in recent years — left them [frustrated with antitrust law](https://www.nytimes.com/2018/09/07/technology/monopoly-antitrust-lina-khan-amazon.html) as the only way to restrain the growing market power and conduct of the big tech companies.

“The mechanism of antitrust is not working to protect competition,” said Fiona Scott Morton, an official in the Justice Department’s antitrust division in the Obama administration, who is an economist at the Yale University School of Management. “**So let’s do something else — use a different tool.”**

### OFF

Sunbursting CP

#### The United States Supreme Court ought to, deploying the technique utilized in Great Northern Railway Company v. Sunburst Oil and Refining Company:

#### decline to rule that antitrust laws should cover the National College Athletics Association by removing the amateurism exemption on the basis that such a decision would undermine judicial deference to reliance interest

#### announce that existing precedent in this area is no longer reliable and that relevant parties should be on notice that the reliance interests that caused it to be upheld in this case will not apply to future challenges

#### not deny certiorari in challenges on the issue

#### CP solves and avoids - sunbursting avoids the downfalls of an unpredictable decision but causes legal change

Faure 14 – Michael Faure, Professor of International and Comparative Environmental Law at Maastricht University and Professor of Comparative Private Law and Economics at the Rotterdam Institute of Law and Economics (RILE), Erasmus School of Law, Morag Goodwin, Associate Professor in European and International Law, Tilburg Law School, and Franziska Weber, Junior Professor for Civil Law & Law and Economics at the Institute of Law and Economics, University of Hamburg, “THE REGULATOR'S DILEMMA: CAUGHT BETWEEN THE NEED FOR FLEXIBILITY & THE DEMANDS OF FORESEEABILITY. REASSESSING THE LEX CERTA PRINCIPLE”, Albany Law Journal of Science and Technology, 24 Alb. L.J. Sci. & Tech. 283, Lexis

Prospective overruling is a judicial technique in which a [\*349] previous precedent or authority is overruled without the new ruling having retrospective effect. n386 It thus represents a departure from the fundamental notion that judicial decisions that develop or change the law necessarily have retroactive effect. n387 It is, or has been, used by a court wishing to overturn or amend bad law, but is wary of the consequences of the retrospective application of their finding. Such consequences may include the inherent unfairness that would result to an individual who had relied on the existing law in good faith n388 or because of reasons of practicality, where the decision would have sweeping consequences for the operation of the judicial system. n389 Although appearing similar, prospective overruling differs from obiter dicta in two significant ways. Firstly, while judges can use obiter dicta to declare certain rules to be bad law or to comment on the likely direction of necessary legal reform, such comments do not entail that the decision in the case before them will be inconsistent with a future case. n390 Secondly, obiter dictum, while possibly highly influential, does not benefit from stare decisis and therefore is not binding. n391 There are a number of different ways in which a court can use prospective overruling. n392 Firstly, a court can announce a new rule or standards that will apply only to future cases, i.e., not to the case before it in the instant dispute. The old rule would also govern any cases that arose from action taken prior to the [\*350] announcement of the new rule but determined after it. n393 This has been called "pure" prospective overruling. n394 A second approach would be to announce a new rule that is only applicable to future cases that arise after the announcement but, as an exception, to apply it to the instant case. n395 A third alternative is to apply the new rule not only to the case at hand but to all other cases already pending at the time of announcement. This third approach excludes those cases in which the action that motivated them predates the announcement but where proceedings had not already been commenced at the moment of declaration of the new rule. n396 Finally, a fourth possibility would be for a court to announce a new rule not having retroactive effect but to suspend the entry into force of that new rule until a future date. n397 This technique is used to allow those actors likely to be affected by the change to adapt their behavior accordingly and to give the legislature the opportunity to enact a different rule should they so wish. n398 Traynor termed this form of prospective overruling "prospective-prospective overruling." n399 In this version of prospective overruling, the new rule does not apply to the case in which it is announced, or to any other cause of action that arises before the delayed entry into force of the new rule. n400 The Court of Justice of the European Union, for example, has accepted the need to place temporal limitations on its rulings in the interests of justice, although it has declared that it does so only in exceptional circumstances. n401 A variation on this form of [\*351] prospective overruling has been suggested by Advocate General Jacobs, whereby both the retrospective and prospective effect of a ruling of the Court of Justice of the European Union could be subject to a temporal limitation; in that case until the Member State concerned has had a reasonable opportunity to consider the introduction of amending legislation. n402 In addition to the European Union, a number of jurisdictions have used or accepted the possibility, if only in principle, of prospective overruling in exceptional circumstances, including the United States, n403 India, n404 New Zealand, n405 Canada, n406 the United Kingdom n407 and Germany. n408 The European Court of Human Rights has been understood to issue prospective rulings, n409 although there is some doubt as to whether its "dynamic" approach to convention interpretation is properly classified as such; n410 however, it certainly accepts such rulings in domestic courts as compatible with the rule of law. n411 At its apogee in the United States, the United States Supreme Court ruled in the case of Linkletter v. Walker, that in both criminal and civil cases, "the accepted rule today is that in appropriate cases the Court may in the interests of justice make the rule prospective." n412 However, since the 1970s, the use of retrospective overruling in the United States has been in retreat. While it remains unclear as to whether the use of "pure" prospective overruling (where the new rule does not apply to the case at hand) has been abandoned in civil cases, n413 the Supreme Court [\*352] has overturned its earlier enthusiasm and now prohibits prospective overruling in criminal cases n414 and the use of selective prospective overruling (i.e., "non-pure") in civil cases. n415 Yet, despite the discrediting of prospective overruling as a technique in the US more than twenty years ago, it continues to attract the interest of senior common law judges. n416 In a 2005 case, In re Spectrum Plus, the House of Lords found that it was theoretically possible to overrule a judgment with prospective effect only; n417 and in 2007, two members of the New Zealand Supreme Court accepted the same possibility. n418 3. The Pros and Cons of Prospective Overruling Given that the heyday of prospective overruling has, until recently, been behind us, what reasons are there for being suspicious of the technique? There are, it seems, two main reasons for rejecting prospective overruling in its entirety. The first has been articulated by the Australian High Court in its emphatic refusal to countenance the use of prospective overruling and concerns an understanding of the nature of judicial interpretation. In the case of Ha v. New South Wales, the Court ruled that, "it would be a perversion of judicial power to maintain in force that which is acknowledged not to be the law." n419 In this reading, where a court determines that the rule they are required to apply is bad law, i.e., that the "real law" is actually now a different standard, it is simply untenable to continue to apply the wrong standard, even where it results in a manifest injustice to one of the parties before it. n420 The notion that prospective overruling is "a perversion of judicial power" gains further credence from the commonly accepted understanding that the role of the judiciary is to interpret the law in light of the case before it, where the primary function of the courts is to [\*353] adjudicate between parties; going beyond the particular case by making a general statement about the law is seen by some as "blatantly legislative." n421 While the legislature looks forward, the proper direction of the courts' attention is backwards, applying the existing law to situations that have already happened. This view was echoed by the United States Supreme Court in Griffith v. Kentucky, in which it ruled, concurring with earlier minority opinions by Justice Harlan, that the "failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication." n422 The second reason for critics to reject prospective overruling concerns the impact upon individuals of arbitrariness to which prospective overruling gives rise. In Griffiths v. Kentucky, the United States Supreme Court stated quite simply that "selective application of new rules violates the principle of treating similarly situated defendants the same." n423 Once a rule or practice has been declared bad law or unconstitutional, it violates the central notion of equality before the law if the new rule is applied to benefit one individual but not another. n424 These concerns can be somewhat alleviated by applying the new rule to all cases stemming from action arising at or after the time of the cause of action of the case in which the new rule is announced, i.e., by limiting the normal retrospective effect of rulings only marginally, but to do so would be to reduce considerably the possible benefits of prospective overruling. n425 In effect, those parties who had relied in good faith on the previous standard in such actions would be held to a new, stricter standard and thus their legitimate expectation of and right to legal certainty would [\*354] be compromised. n426 What, then, are the benefits? In particular, would other, less dramatic, techniques do the same job without encountering the hostility that prospective overruling can inspire? Obiter dicta could be used, for example, to indicate a likely direction of legal reform without actually introducing a new rule. n427 However, it is in large part the binding nature of a prospective decision that makes it such a useful technique in balancing flexibility and foreseeability. n428 While obiter dicta could be used in a similar way, although such statements lack the ability to bind future courts, they reduce the foreseeability of parties the same way incentives for operators to adapt their behavior are reduced. Operators may instead play a waiting game in which they fail to carry out adaptations in the hope that a different court will continue to apply the existing standard. Prospective overruling, we suggest, cannot be replaced by the less controversial tool of obiter dictum. Moreover, obiter dictum would obviously only provide a solution in those legal systems where it exists, which is not the case for many civil law systems. n429 The first main benefit of prospective overruling follows from the assertion that it is a perversion of judicial power to uphold a law that is understood to be unsound. n430 Courts are rightly reluctant to overturn a precedent, even where they are convinced of the unsoundness of the rule in question, where the harm caused by retrospective change is greater than the supposed benefits. n431 Thus, Justice Traynor suggested, in his classic article on the topic, that the main benefit of the technique of prospective overruling is that it enables courts to "change[] bad law without upsetting the ... expectations of those who [have] relied upon it." n432 For Traynor, prospective overruling, in direct contrast to its critics, is a necessary tool for the proper administration of justice. n433 Allowing bad law to stand simply to overturn a [\*355] precedent would entail unacceptable and unreasonable hardship for one of the parties concerned is an equally perverse understanding of the judicial role. n434

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Sua sponte DA

#### The aff is sua sponte – it makes a decision in absence of arguments presented before the court – that crushes court legitimacy

Milani & Smith 02 (Adam and Michael, both are Assistant Professors, Mercer University School of Law, “Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts,” 69 Tenn. L. Rev. 245, Winter, lexis)

The heart of the American legal system is the adversary process in which trained advocates present the parties’ facts and arguments to neutral decision makers. The fundamental premise of the adversary process is that these advocates will uncover and present more useful information and arguments to the decision maker than would be developed by a judicial officer acting on his own in an inquisitorial system.3 The adversary process is also said to “promote[] litigant and societal acceptance of decisions rendered by the courts”4 because a party who “is intimately involved in the adjudicatory process and feels that he has [they have] been given a fair opportunity to present his case . . . is likely to accept the results whether favorable or not.”5 Indeed, the Joint Conference on Responsibility of the American Bar Association and the Association of American Law Schools stated that “[i]n a very real sense it may be said that the integrity of the adjudicative process itself depends upon the participation of the advocate.”6 Accordingly, most lawyers probably never think about the possibility that a court will decide a case on an issue that the court itself raises and which was neither briefed nor argued by the parties. But we all know it happens. We even have a name for such a decision: [is] sua sponte. Translated from its original Latin, “sua sponte” means “on his or its own motion.”7 In the legal setting, sua sponte describes a decision or action undertaken by a court on its own motion8 as opposed to an action or decision done in response to a party’s request or argument. As such, the concept of “sua sponte” is an important exception to two basic [the] principles of our adversary system of adjudication: (1) that the parties will control the litigation, and (2) that the decision maker will be neutral and passive.9 One of the clearest manifestations of these principles is that the parties themselves, not the decision maker, determine what issues will be adjudicated. In the context of judicial decision making, a court deviates from its traditional “passive” role in the adjudicatory process when it raises an issue not identified by the parties but which it deems relevant to the legal controversy before it. Nonetheless, raising issues sua sponte is not an uncommon practice.10 In fact, legal scholars have identified several kinds of issues that are commonly raised by courts on their own. First, both trial and appellate courts often raise jurisdictional issues such as standing, subject matter jurisdiction, and mootness sua sponte.1

#### That corrodes rule of law via abdicating judicial legitimacy.

Donaldson ’17 [Michael J; Partner at Burnet, Duckworth & Palmer, LLP, Master of Laws from Columbia; 2017; “Justice in Full Is Time Well Spent: Why the Supreme Court Should Ban Sua Sponte Dismissals”; http://www.bdplaw.com/publications/justice-in-full-is-time-well-spent-why-the-supreme-court-should-ban-sua-sponte-dismissals/; Quinnipiac Law Review, Vol 36; accessed 9/15/21; TV]

There is a lot wrong with sua sponte dismissals. They are inconsistent with the adversary system, and change the judge's role from referee to contestant.85 They can undermine respect for the legal system. And they increase the likelihood of errors, leading to unnecessary appeals and a waste of judicial resources." But most importantly, they lack the very due process the courts are supposed to safeguard. A. Failure to Provide Due Process Sua sponte decisions are inconsistent with due process.89 Period. There is no other way to look at it. 90 Not only does a plaintiff surprised by a sua sponte dismissal not receive "due" process, she receives no process at all.91 She has no idea her lawsuit is in jeopardy of being dismissed, no idea what the reasons for that dismissal might be, and no opportunity to respond. 92 This is the case whether the court's dismissal decision is right or wrong. 93 As Allan Vestal puts it: When [issues are] considered sua sponte both parties are taken completely by surprise and the court decides the matter on grounds not urged by either. Neither has had any opportunity to consider the matter, and both are now bound by res judicata grounded on considerations which represent not well reasoned positions for the litigants, but rather only the fortuitous decision of a 94 wayward court. The reference to res judicata here is important. As Milani and Smith point out, the res judicata doctrine requires a party or its privy to be a participant in the former proceeding before the court can bind him to the consequences of that proceeding because, according to the Supreme Court, "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings."95 If this is the standard applied to former proceedings, how can it not apply to proceedings currently before the court? Lon Fuller once wrote of sua sponte decisionmaking: [I]f the grounds for the decision fall completely outside the framework of the argument, making all that was discussed or proved at the hearing irrelevant ... the adjudicative process has become a sham, for the parties' participation in the decision has lost all meaning.9 6 The situation is even harder to defend when there is no hearing at all. 9 B. Undermining Respect for the Legal System The perception that the courts are regularly failing to provide due process cannot do anything but undermine respect for the legal system.9 8 Sir Robert Megarry, in the speech quoted at the beginning of this article,99 underlined the importance of sending the unsuccessful litigant away feeling as though he has had a fair hearing.' Justice Harlan was obviously cognizant of this problem in his dissent in Mapp, when he warned that the Court's sua sponte decision in that case was "not likely to promote respect ... for the court's adjudicatory process."o This is not a farfetched concern. Offenkrantz and Lichter note that in the Second Circuit's high-profile decision to "[sua sponte remove] Judge Shira Scheindlin from further proceedings in two stop-and-frisk cases," an order which left the Judge "completely blindsided," "newspapers were reporting that appellate courts had carte blanche to raise and decide important issues in a case without ever seeking the input of any of the parties to it."' 0 2 Megarry tells a story of a client of his who had a fatal flaw in his case, but insisted on going ahead anyway.10 3 Instead of seizing on the fatal flaw at the outset, the trial judge heard the case all the way through.1 0 4 The client won on his two collateral points, but, as expected, lost on the key issue. o Megarry tells the story of what happened next: The course taken by the judge must have prolonged the hearing by an hour or two. But the effect on the defeated tenant was striking. True, he had lost the last point and the case as a whole; but he had been victorious on the other two points. All that nonsense about the agent's lack of authority and the letter not having been received in time had been blown away by the judge. It was a pity about the wording of the letter, of course; but he had seen his case being put in full, and none of his grievances had been left unheard or unresolved. This is as it should be. Courts must not, as Megarry puts it, give in to "the temptation of brevity."'0 o Their very legitimacy hangs in the balance. A loss of respect for the courts marks the beginning of the unraveling of the rule of law. This is simply too high of a price to pay for efficiency.

#### Extinction.

Davis and Morse ’18 [Christina and Julia; September 19; Professor of Government at Harvard University; Professor of Political Science at the University of California at Santa Barbara; International Studies Quarterly, “Protecting Trade by Legalizing Political Disputes: Why Countries Bring Cases to the International Court of Justice,” vol. 62]

Trade, Conflict, and Adjudication We argue that countries turn to international adjudication to protect trade flows under conditions of strong economic interdependence. This argument is built on two key assumptions. First, states believe that an international dispute over territory, fishing rights, or another salient issue could harm trade. Second, states view international adjudication as an effective way to end the dispute. Given the risk of harm to economic relations and the potential for courts to contribute to conflict resolution, states with high trade value vested in a relationship will be more willing to undertake costly litigation. This section elaborates on the general conditions of our theory and then explains why the ICJ is a good venue for testing the relationship between economic interdependence and international adjudication. The Adverse Impact of Conflict on Trade The premise that conflict disrupts trade is central to the theory of commercial peace. Russett and Oneal (2001) draw on the work of philosopher Immanuel Kant to argue that interdependence deters conflict by raising its costs. According to this reasoning, war interrupts trade while peace promotes stable commerce, leading states to calculate that the gains of peace are significant compared to the costs of war.4 Other perspectives focus on the informational role of interdependence to lower uncertainty between states (Reed 2003). Gartzke, Li, and Boehmer (2001) contend economic interdependence allows states to signal their resolve through their willingness to bear the economic costs of confrontation.5 A host of empirical studies supports the idea that conflict reduces trade (Keshk, Reuveny, and Pollins 2004; Long 2008). Several potential channels connect trade and conflict, including direct damage to infrastructure and transportation resulting from actual conflict, sanctions policies, and informal discrimination by governments or private actors. Glick and Taylor (2010) find that the effect of war on trade is significant and persistent. At a lower level, political tensions may also suppress trade (Pollins 1989; Fuchs and Klann 2013). Consumer boycotts and financial market reactions in some cases have led to adverse market impact (Fisman, Hamao, and Wang 2014; Heilmann 2016; Pandya 2016). Simmons (2005) finds that territorial disputes have a sizable negative impact on trade even in the absence of militarized action. Others suggest states anticipate the potential adverse impact of conflict on trade, and therefore trade less to begin with if they think that war is likely. In such a scenario, the marginal economic costs of war should be insufficient to change a state's calculation for going to war (Morrow 1999; Barbieri 2002). Gowa and Hicks (2017) contend that trade is largely diverted through third-party channels, which compensate for having less direct trade with the adversary. We assume that leaders and business constituencies on average believe that conflict damages trade relations. Political conflict could lead governments to adopt sanctions against an adversary or to restrict financial flows. Violence likely disrupts trading routes and slows the movement of goods. The potential for adverse financial market reactions and consumer response adds further unpredictability about the risk of spillover from political disagreement into economic harm. Substitution through third parties could alleviate the harm, but this would still increase trade costs. The expected harm to trade motivates states to pursue the resolution of disputes. Adjudication as a Conflict Resolution Mechanism When states want to resolve an interstate dispute, why would they choose adjudication rather than negotiations, economic sanctions, or militarized action? In some cases, the decision follows an episode of military conflict as part of an effort to normalize relations. In other disputes, countries may turn to a legal venue to prevent a problem from ever reaching the stage that could produce serious political tensions or threats of force. The literature offers three broad types of explanations for why states pursue adjudication: legitimacy, informational benefits, and domestic obstacles to settlement. At the systemic level, international norms support peaceful conflict resolution. Some contend that rule of law has come to shape the identities of states, forming norms about appropriate action in both the domestic and international spheres (Finnemore and Sikkink (1998, 902). When international law has been established through fair procedures and offers coherent principles, it forms a legitimate source of authority in international affairs that generates an independent “compliance pull” on state behavior (Franck 1990, 65). International courts combine both legitimacy and authority as they help states solve specific disputes about how to interpret international law; the growing role for international courts in international affairs represents an important trend (Alter 2014; Alter, Helfer, and Madsen 2016). Integration with national courts has reinforced states’ use of the European Court of Justice (ECJ), which stands out for its expansive caseload and impact on state behavior (Alter 1998). The ICJ has achieved a relatively strong record of compliance with rulings (Schulte 2004; Llamzon 2007; Mitchell and Hensel 2007; Johns 2012). Legal settlement can help states coordinate policies through the provision of information. Compared to bilateral negotiations or nonbinding third-party arbitration, adjudication conveys a government's willingness to reach an agreement (Helfer and Slaughter 2005; Gent and Shannon 2010). Having taken the public step to initiate legal action, a government would appear inconsistent and incur a reputational penalty if it also took unilateral measures such as sanctions or military actions before the legal process had reached a conclusion. This shapes the diplomatic context because participants know that the matter will neither escalate into violence nor disappear through neglect. A court ruling offers a focal point amidst uncertainty about how to interpret the terms of an agreement (Ginsburg and McAdams 2004; Huth, Croco, and Appel 2011). As the record-keeper of past actions, courts support systems of tit-for-tat and reputational enforcement (Milgrom, North, and Weingast 1990; Carrubba 2005; Mitchell and Hensel 2007). In these informational theories of courts, states may comply with court rulings in the absence of coercive measures or the threat of sanctions because the reputational costs of noncompliance are too high. Rather than simply interpret law, courts coordinate expectations about enforcement. Johns (2012) models the circumstances whereby mobilization of third-party actions in support of a court ruling generates endogenous enforcement that can affect outcomes. In this way, multilateral enforcement makes an international court different from the pressure available in bilateral negotiations. International courts also offer a way for states to frame settlements to appeal to domestic audiences (Fang 2008). Simmons notes that even when the same deal could be reached in negotiations or through a court decision, a negotiated settlement could be viewed as a sign of weakness while legal resolution would be a positive signal for future cooperation (Simmons 2002, 834). This dynamic occurs because “domestic groups will find it more attractive to make concessions to a disinterested institution than to a political adversary” (Simmons 2002, 834). In research on several prominent ICJ cases, Fischer (1982, 271) emphasizes the court has helped governments to save face. Consequently, those governments unable to reach agreements over domestic opposition may find it easier to do so with the involvement of a third-party ruling. Allee and Huth (2006a) show that governments with higher levels of domestic political constraints are more likely to choose adjudication over negotiation for settling territorial disputes. Domestic political constraints also increase the probability of filing complaints at the WTO (Davis 2012). The mobilization of domestic groups plays a critical role in litigation patterns at the ECJ (Alter and Vargas 2000).a

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Econ DA

#### Recovery is strong but contingent on confidence and investment

Cambon 21 (Sarah Chaney Cambon – Wall Street Journal's economics team reporter, June 27, 2021, “Capital-Spending Surge Further Lifts Economic Recovery”, <https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800>, accessed 8/18/21, DL)

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. Some of the recent increases in capital spending reflect a silver lining to the shortages of raw materials that many manufacturers have faced in recent months. “The flip side of the supply-chain bottlenecks that we’re seeing right now is that order backlogs are building,” said Mr. Rosener, which he said in turn has led to higher manufacturing activity. Demand for manufactured goods strengthened in May, while customer inventories hit an all-time low, according to the Institute for Supply Management’s manufacturing survey. Manufacturing is a particularly capital-intensive industry. It requires more spending to build a car than to serve a restaurant meal, Mr. Rosener said. Production could remain strong for several quarters as companies rebuild inventories, he said. The longer-term outlook for capital spending is bright. Though economic uncertainty tends to damp capital spending, an economic disruption such as Covid-19 can support investment. The pandemic forced companies to minimize contact between consumers and workers, resulting in a rapid increase in spending on productivity-enhancing digital technology that many economists predict will endure.

#### Antitrust regs causes uncertainty and expands rent-seeking

Crews and Young 19 (Clyde Wayne Crews, Vice President for Policy and Senior Fellow @ Competitive Enterprise Institute, Ryan Young is a Senior Fellow @ Competitive Enterprise Institute, “The Case against Antitrust Law”, Competitive Enterprise Institute, 04/16/2019, <https://cei.org/studies/the-case-against-antitrust-law/>)//babcii

Uncertainty. Antitrust regulation creates an enormous amount of economic uncertainty. Nobody knows how it will be used at a given time. If antitrust statutes are interpreted literally, potentially any firm, no matter how small, can be charged with an antitrust violation—or for dominating its relevant market, however defined. If a business sells goods at a lower price than its competitors, it can be charged with predatory pricing. If it sells goods at the same price as its competitors, it can be charged with collusion. And if it sells goods at a higher price than its competitors, it can be charged with abusing market power. A century of case law has evolved some guidelines, but judicial precedents can be overturned any time a new case is brought. There are few bright-line legislative or judicial standards for antitrust enforcement. It is mostly guided by a mix of inconsistently enforced judicial precedents, regulators’ personal discretion, and political factors unrelated to market competition. Even the mere threat of antitrust enforcement can have a preemptive chilling effect on innovation, business strategies, and potential efficiency-enhancing arrangements. Rent-seeking. Neo-Brandeisians rightly want to reduce rent-seeking, but they routinely propose policies that will backfire because of a common misunderstanding of how governments work in practice. Government employees do not operate with only the public interest in mind. They are human beings, with the same incentives and flaws as other human beings. They want to increase their budgets and power and enjoy the publicity that accompanies big cases. It also makes regulators especially vulnerable to what is known as a Baptist-and-boot- legger dynamic. In Clemson University economist Bruce Yandle’s classic example, a moralizing Baptist and a profit-seeking bootlegger will both favor a law requiring liquor stores to close on Sundays, though for different reasons. A true-believing “Baptist” in Congress or at the Justice Department or the FTC would be inclined to listen seriously to the entreaties of corporate “bootleggers” who can come up with virtuous-sounding reasons for why regulators should give their businesses special favorable treatment.36 Oracle, one of Microsoft’s rivals, ran its own independent Microsoft investigation during that company’s antitrust case, for what it alleged were Baptist-style reasons. “All we did is try to take information that was hidden and bring it to light,” said Oracle CEO Larry Ellison. “I don’t think that was arrogance. I think it was a public service.”37 Former Sen. Orrin Hatch (R-UT), who counted Oracle among his constituents, was one of the loudest anti-Microsoft voices in Congress. Around that time, he also received $17,500 donations from executives at Netscape, AOL, and Sun Microsystems. Perhaps heeding Hatch’s admonition that, “If you want to get involved in business, you should get involved in politics,” Microsoft expanded its presence in Washington from a small outpost at a Bethesda, Maryland, sales office to a large downtown Washington office with a full-time staff plus multiple outside lobbyists.38 Microsoft quickly went from a virtual non-entity in Washington to the 10th-largest corporate soft money campaign donor by the 1997-1998 election cycle. Sen. Hatch’s campaign was among the beneficiaries.39 The lines between Baptist and boot- legger can be blurry, and some actors play both parts. But such ethical dynamics are an integral part of antitrust regulation in practice.

#### Slow growth causes nuclear escalation, terrorism, and global warming --- Extinction

**Landay 17** (Jonathan – Reuters National Security Correspondent, 1/9/17, “U.S. intelligence study warns of growing conflict risk”, <https://www.reuters.com/article/us-usa-intelligence-future-idUSKBN14T1J4>)

WASHINGTON (Reuters) - The risk of **conflicts** between and within **nations** will **increase** over the next five years to levels not seen since the Cold War as **global growth slows**, the post-World War Two order erodes and **anti-globalization** fuels **nationalism**, said a U.S. intelligence report released on Monday. “These **trends** will converge at an unprecedented pace to make governing and **cooperation** harder and to change the **nature of power** – fundamentally altering the **global landscape**,” said “Global Trends: Paradox of Progress,” the sixth in a series of quadrennial studies by the U.S. National Intelligence Council. The findings, published less than two weeks before U.S. President-elect Donald Trump takes office on Jan. 20, outlined factors shaping a “dark and difficult near future,” including a more assertive **Russia** and **China**, **regional conflicts**, **terrorism**, rising **income inequality**, **climate change** and **sluggish economic growth**. Global Trends reports deliberately avoid analyzing U.S. policies or choices, but the latest study underscored the complex difficulties Trump must address in order to fulfill his vows to improve relations with Russia, level the economic playing field with China, return jobs to the United States and defeat terrorism. The National Intelligence Council comprises the senior U.S. regional and subject-matter intelligence analysts. It oversees the drafting of National Intelligence Estimates, which often synthesize work by all 17 intelligence agencies and are the most comprehensive analytic products of U.S intelligence. The study, which included interviews with academic experts as well as financial and political leaders worldwide, examined political, social, economic and technological trends that the authors project will shape the world from the present to 2035, and their potential impact. ‘INWARD-LOOKING WEST’ It said the threat of **terrorism** would grow in coming decades as small groups and individuals harnessed “**new technologies**, ideas and relationships.” **Uncertainty** about the **U**nited **S**tates, coupled with an “inward-looking West” and the weakening of international human rights and conflict prevention standards, will encourage **China** and **Russia** to challenge **American influence**, the study added. Those challenges “will stay below the threshold of hot war but bring **profound risks** of **miscalculation**,” the study warned. “Overconfidence that material strength can manage escalation will **increase** the **risks** of **interstate conflict** to levels not seen since the Cold War.” While “hot war” may be avoided, differences in values and interests among states and drives for regional dominance “are leading to a **spheres of influence** world,” it said, The latest Global Trends, the subject of a Washington conference, added that the situation also offered opportunities to governments, societies, groups and individuals to make choices that could bring “more hopeful, secure futures.” “As the paradox of progress implies, the same trends generating near-term risks also can create opportunities for better outcomes over the long term,” the study said. THE HOME FRONT The report also said that while globalization and technological advances had “enriched the richest” and raised billions from poverty, they had also “hollowed out” Western middle classes and ignited backlashes against globalization. Those trends have been compounded by the largest migrant flows in seven decades, which are stoking “nativist, anti-elite impulses.” “**Slow growth** plus technology-induced **disruptions** in **job markets** will threaten poverty reduction and **drive tensions** within countries in the years to come, fueling the very **nationalism** that contributes to tension between counties,” it said. The trends shaping the future include contractions in the working-age populations of wealthy countries and expansions in the same group in poorer nations, especially in Africa and South Asia, increasing **economic**, employment, urbanization and welfare **pressures**, the study said. The world will also continue to experience weak **near-term growth** as governments, institutions and businesses struggle to overcome **fallout** from the Great **Recession**, the study said. “**Major economies** will confront **shrinking workforces** and **diminishing productivity** gains while recovering from the 2008-09 financial **crisis** with **high debt**, **weak demand**, and doubts about globalization,” said the study. “China will attempt to shift to a consumer-driven economy from its longstanding export and investment focus. **Lower growth** will **threaten poverty reduction** in developing counties.” **Governance** will become **more difficult** as issues, including global **climate change**, **environmental degradation** and **health threats** demand **collective action**, the study added, while such cooperation **becomes harder**.

### OFF

FTC DA

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

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

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

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

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

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

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

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

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

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

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

## Case

### Framing

#### Extinction first --- Living is a pre-req for any other issue, magnitude is nearly infinite, and future gains in quality of life ensure it’s a prior question

Todd 17 [Ben has a 1st from Oxford in Physics and Philosophy, has published in Climate Physics, once kick-boxed for Oxford, and speaks Chinese, badly. "The case for reducing extinction risk." https://80000hours.org/articles/extinction-risk/]

In this new age, what should be our biggest priority as a civilisation? Improving technology? Helping the poor? Changing the political system? Here’s a suggestion that’s not so often discussed: our first priority should be to survive. So long as civilisation continues to exist, we’ll have the chance to solve all our other problems, and have a far better future. But if we go extinct, that’s it. Why isn’t this priority more discussed? Here’s one reason: many people don’t yet appreciate the change in situation, and so don’t think our future is at risk. Social science researcher Spencer Greenberg surveyed Americans on their estimate of the chances of human extinction within 50 years. The results found that many think the chances are extremely low, with over 30% guessing they’re under one in ten million.2 We used to think the risks were extremely low as well, but when we looked into it, we changed our minds. As we’ll see, researchers who study these issues think the risks are over one thousand times higher, and are probably increasing. These concerns have started a new movement working to safeguard civilisation, which has been joined by Stephen Hawking, Elon Musk, and new institutes founded by researchers at Cambridge, MIT, Oxford, and elsewhere. In the rest of this article, we cover the greatest risks to civilisation, including some that might be bigger than nuclear war and climate change. We then make the case that reducing these risks could be the most important thing you do with your life, and explain exactly what you can do to help. If you would like to use your career to work on these issues, we can also give one-on-one support. How likely are you to be killed by an asteroid? An overview of naturally occurring extinction risks An overview of naturally occurring extinction risks A one in ten million chance of extinction in the next 50 years — what many people think the risk is — must be an underestimate. Naturally occurring extinction risks can be estimated pretty accurately from history, and are much higher. If Earth was hit by a 1km-wide asteroid, there’s a chance that civilisation would be destroyed. By looking at the historical record, and tracking the objects in the sky, astronomers can estimate the risk of an asteroid this size hitting Earth as about 1 in 5000 per century.3 That’s higher than most people’s chances of being in a plane crash (about one in five million per flight), and already about 1000-times higher than the one in ten million risk that some people estimated.4 Some argue that although a 1km-sized object would be a disaster, it wouldn’t be enough to cause extinction, so this is a high estimate of the risk. But on the other hand, there are other naturally occurring risks, such as supervolcanoes.5 All this said, natural risks are still quite small in absolute terms. An upcoming paper by Dr. Toby Ord estimated that if we sum all the natural risks together, they’re very unlikely to add up to more than a 1 in 300 chance of extinction per century.6 Unfortunately, as we’ll now show, the natural risks are dwarfed by the human-caused ones. And this is why the risk of extinction has become an especially urgent issue. A history of progress, leading to the start of the most dangerous epoch in human history If you look at history over millennia, the basic message is that for a long-time almost everyone was poor, and then in the 18th century, that changed.7

Chart, line chart

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This was caused by the industrial revolution — perhaps the most important event in history. It wasn’t just wealth that grew. The following chart shows that over the long-term, life expectancy, energy use and democracy have all grown rapidly, while the percentage living in poverty has dramatically decreased.8

Timeline

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Literacy and education levels have also dramatically increased:

Chart

Description automatically generated

**People** also seem to become happier as they get wealthier. In The Better Angels of Our Nature, Steven Pinker argues that violence is going down.9 Individual freedom has increased, while racism, sexism and homophobia have decreased. Many people think the world is getting worse,10 and it’s true that modern civilisation does some terrible things, such as factory farming. But as you can see in the data, many important measures of progress have improved dramatically. More to the point, no matter what you think has happened in the past, if we look forward, improving technology, political organisation and freedom gives **our descendant**s the **potential to solve our current problems**, and have vastly better lives.11 It is possible to end poverty, prevent climate change, alleviate suffering, and more. But also notice the purple line on the second chart: war-making capacity. It’s based on estimates of global military power by the historian Ian Morris, and it has also increased dramatically. Here’s the issue: improving technology holds the possibility of enormous gains, but also enormous risks. Each time we discover a new technology, most of the time it yields huge benefits. But there’s also a chance we discover a technology with more destructive power than we have the ability to wisely use. And so, although the present generation lives in the most prosperous period in human history, it’s plausibly also the most dangerous. The first destructive technology of this kind was nuclear weapons. Nuclear weapons: a history of near-misses Today we all have North Korea’s nuclear programme on our minds, but current events are just one chapter in a long saga of near misses. We came near to nuclear war several times during the Cuban Missile crisis alone.12 In one incident, the Americans resolved that if one of their spy planes were shot down, they would immediately invade Cuba without a further War Council meeting. The next day, a spy plane was shot down. JFK called the council anyway, and decided against invading. An invasion of Cuba might well have triggered nuclear war; it later emerged that Castro was in favour of nuclear retaliation even if “it would’ve led to the complete annihilation of Cuba”. Some of the launch commanders in Cuba also had independent authority to target American forces with tactical nuclear weapons in the event of an invasion. In another incident, a Russian nuclear submarine was trying to smuggle materials into Cuba when they were discovered by the American fleet. The fleet began to drop dummy depth charges to force the submarine to surface. The Russian captain thought they were real depth charges and that, while out of radio communication, the third world war had started. He ordered a nuclear strike on the American fleet with one of their nuclear torpedoes. Fortunately, he needed the approval of other senior officers. One, Vasili Arkhipov, disagreed, preventing war. Putting all these events together, JFK later estimated that the chances of nuclear war were “between one in three and even”.13 There have been plenty of other close calls with Russia, even after the Cold War, as listed on this nice Wikipedia page. And those are just the ones we know about. Nuclear experts today are just as concerned about tensions between India and Pakistan, which both possess nuclear weapons, as North Korea.14 The key problem is that several countries maintain large nuclear arsenals that are ready to be deployed in minutes. This means that a false alarm or accident can rapidly escalate into a full-blown nuclear war, especially in times of tense foreign relations. Would a nuclear war end civilisation? It was initially thought that a nuclear blast might be so hot that it would ignite the atmosphere and make the Earth uninhabitable. Scientists estimated this was sufficiently unlikely that the weapons could be “safely” tested, and we now know this won’t happen. In the 1980s, the concern was that ash from burning buildings would plunge the Earth into a long-term winter that would make it impossible to grow crops for decades.15 Modern climate models suggest that a nuclear winter severe enough to kill everyone is very unlikely, though it’s hard to be confident due to model uncertainty.16 Even a “mild” nuclear winter, however, could still cause mass starvation.17 For this and other reasons, a nuclear war would be extremely destabilising, and it’s unclear whether civilisation could recover. How likely is a nuclear war to permanently end civilisation? It’s very hard to estimate, but it seems hard to conclude that the chance of a civilisation-ending nuclear war in the next century isn’t over 0.3%. That would mean the risks from nuclear weapons are greater than all the natural risks put together. (Read more about nuclear risks.) This is why the 1950s marked the start of a new age for humanity. For the first time in history, it became possible for a small number of decision-makers to wreak havoc on the whole world. We now pose the greatest threat to our own survival — that makes today the most dangerous point in human history. And nuclear weapons aren’t the only way we could end civilisation. How big is the risk of run-away climate change? In 2015, President Obama said in his State of the Union address that:18 “No challenge  poses a greater threat to future generations than climate change” Climate change is certainly a major risk to civilisation. The graph below shows estimates of climate sensitivity. Climate sensitivity is how much warming to expect in the long-term if CO2 concentrations double, which is roughly what’s expected within the century. The most likely outcome is 2-4 degrees of warming, which would be bad, but survivable. However, these estimates give a 10% chance of warming over 6 degrees, and perhaps a 1% chance of warming of 9 degrees. That would render large fractions of the Earth functionally uninhabitable, requiring at least a massive reorganisation of society. It would also probably increase conflict, and make us more vulnerable to other risks. (If you’re sceptical of climate models, then you should increase your uncertainty, which makes the situation more worrying.) So, it seems like the chance of a massive climate disaster created by CO2 is perhaps similar to the chance of a nuclear war. Researchers who study these issues think nuclear war seems more likely to result in outright extinction, due to the possibility of nuclear winter, which is why we think nuclear weapons pose an even greater risk than climate change. That said, climate change is certainly a major problem, which should raise our estimate of the risks even higher. (Read more about run-away climate change.) What new technologies might be as dangerous as nuclear weapons? The invention of nuclear weapons led to the anti-nuclear movement just a decade later in the 1960s, and the environmentalist movement soon adopted the cause of fighting climate change. What’s less appreciated is that new technologies will present further catastrophic risks. This is why we need a movement that is concerned with safeguarding civilisation in general. Predicting the future of technology is difficult, but because we only have one civilisation, we need to try our best. Here are some candidates for the next technology that’s as dangerous as nuclear weapons. In 1918-1919, over 3% of the world’s population died of the Spanish Flu.19 If such a pandemic arose today, it might be even harder to contain due to rapid global transport. What’s more concerning, though, is that it may soon be possible to genetically engineer a virus that’s as contagious as the Spanish Flu, but also deadlier, and which could spread for years undetected. That would be a weapon with the destructive power of nuclear weapons, but far harder to prevent from being used. Nuclear weapons require huge factories and rare materials to make, which makes them relatively easy to control. Designer viruses might be possible to create in a lab with a couple of biology PhDs. In fact, in 2006, The Guardian was able to order segments of the extinct smallpox virus by mail order.20 Some terrorist groups have expressed interest in using indiscriminate weapons like these. (Read more about pandemic risks.) Another new technology with huge potential power is artificial intelligence. The reason that humans are in charge and not chimps is purely a matter of intelligence. Our large and powerful brains give us incredible control of the world, despite the fact that we are so much physically weaker than chimpanzees. So then what would happen if one day we created something much more intelligent than ourselves? In 2017, 350 researchers who have published peer-reviewed research into artificial intelligence at top conferences were polled about when they believe that we will develop computers with human-level intelligence: that is, a machine that is capable of carrying out all work tasks better than humans. The median estimate was that there is a 50% chance we will develop high-level machine intelligence in 45 years, and 75% by the end of the century.21 These probabilities are hard to estimate, and the researchers gave very different figures depending on precisely how you ask the question.22 Nevertheless, it seems there is at least a reasonable chance that some kind of transformative machine intelligence is invented in the next century. Moreover, greater uncertainty means means that it might come sooner than people think rather than later. What risks might this development pose? The original pioneers in computing, like Alan Turing and Marvin Minsky, raised concerns about the risks of powerful computer systems,23 and these risks are still around today. We’re not talking about computers “turning evil”. Rather, one concern is that a powerful AI system could be used by one group to gain control of the world, or otherwise be mis-used. If the USSR had developed nuclear weapons 10 years before the USA, the USSR might have become the dominant global power. Powerful computer technology might pose similar risks. Another concern is that deploying the system could have unintended consequences, since it would be difficult to predict what something smarter than us would do. A sufficiently powerful system might also be difficult to control, and so be hard to reverse once implemented. These concerns have been documented by Oxford Professor Nick Bostrom in Superintelligence and by AI pioneer Stuart Russell. Most experts think that better AI will be a hugely positive development, but they also agree there are risks. In the survey we just mentioned, AI experts estimated that the development of high-level machine intelligence has a 10% chance of a “bad outcome” and a 5% chance of an “extremely bad” outcome, such as human extinction.21 And we should probably expect this group to be positively biased, since, after all, they make their living from the technology. Putting the estimates together, if there’s a 75% chance that high-level machine intelligence is developed in the next century, then this means that the chance of a major AI disaster is 5% of 75%, which is about 4%. (Read more about risks from artificial intelligence.) People have raised concern about other new technologies, such as other forms of geo-engineering and atomic manufacturing, but they seem significantly less imminent, so are widely seen as less dangerous than the other technologies we’ve covered. You can see a longer list of extinction risks here. What’s probably more concerning is the risks we haven’t thought of yet. If you had asked people in 1900 what the greatest risks to civilisation were, they probably wouldn’t have suggested nuclear weapons, genetic engineering or artificial intelligence, since none of these were yet invented. It’s possible we’re in the same situation looking forward to the next century. Future “unknown unknowns” might pose a greater risk than the risks we know today. Each time we discover a new technology, it’s a little like betting against a single number on a roulette wheel. Most of the time we win, and the technology is overall good. But each time there’s also a small chance the technology gives us more destructive power than we can handle, and we lose everything. If we add everything together, what’s the total risk? Many experts who study these issues estimate that the total chance of human extinction in the next century is between 1 and 20%. For instance, an informal poll in 2008 at a conference on catastrophic risks found they believe it’s pretty likely we’ll face a catastrophe that kills over a billion people, and estimate a 19% chance of extinction before 2100.24

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| --- | --- | --- |
| Risk | At least 1 billion T dead | Human  extinction T |
| Number killed by molecular nanotech weapons. | 10% | 5% |
| Total killed by superintelligent Al. | 5% | 5% |
| Total killed in all wars (including civil wars). | 30% | 4% |
| Number killed in the single biggest engineered pandemic. | 10% | 2% |
| Total killed in all nuclear wars. | 10% | 1% |
| Number killed in the single biggest nanotech accident. | 1% | 0.5% |
| Number killed in the single biggest natural pandemic. | 5% | 0.05% |
| Total killed in all acts of nuclear terrorism. | 1% | 0.03% |
| Overall risk of extinction prior to 2100 | n/a | 19% |

Dr. Toby Ord, who is writing a book on this topic, puts the risk in the next century at 1 in 6 — the roll of a dice. These figures are about one million times higher than what people normally think. What should we make of these estimates? Presumably, the researchers only work on these issues because they think they’re so important, so we should expect their estimates to be high (“selection bias”). But does that mean we can dismiss their concerns entirely? Given this, what’s our personal best guess? It’s very hard to say, but we find it hard to confidently ignore the risks. Overall, we think the risk is likely over 3%. Why helping to safeguard the future could be the most important thing you can do with your life How much should we prioritise working to reduce these risks compared to other issues, like global poverty, ending cancer or political change? At 80,000 Hours, we do research to help people find careers with positive social impact. As part of this, we try to find the most urgent problems in the world to work on. We evaluate different global problems using our problem framework, which compares problems in terms of: Scale – how many are affected by the problem Neglectedness -how many people are working on it already Solvability – how easy it is to make progress If you apply this framework, we think that safeguarding the future comes out as the world’s biggest priority. And so, if you want to have a big positive impact with your career, this is the top area to focus on. In the next few sections, we’ll evaluate this issue on scale, neglectedness and solvability, drawing heavily on Existential Risk Prevention as a Global Priority by Nick Bostrom and unpublished work by Toby Ord, as well as our own research. First, let’s start with the scale of the issue. We’ve argued there’s likely over a 3% chance of extinction in the next century. How big an issue is this? One figure we can look at is how many people might die in such a catastrophe. The population of the Earth in the middle of the century will be about 10 billion, so a 3% chance of everyone dying means the expected number of deaths is about 300 million. This is probably more deaths than we can expect over the next century due to the diseases of poverty, like malaria.25 Many of the risks we’ve covered could also cause a “medium” catastrophe rather than one that ends civilisation, and this is presumably significantly more likely. The survey we covered earlier suggested over a 10% chance of a catastrophe that kills over 1 billion people in the next century, which would be at least another 100 million deaths in expectation, along with far more suffering among those who survive. So, even if we only focus on the impact on the present generation, these catastrophic risks are one of the most serious issues facing humanity. But this is a huge underestimate of the scale of the problem, because if civilisation ends, then we give up our entire future too. Most people want to leave a better world for their grandchildren, and most also think we should have some concern for future generations more broadly. There could be many more people having great lives in the future than there are people alive today, and we should have some concern for their interests. There’s a possibility the human civilization could last for millions of years, so when we consider the impact of the risks on future generations, the stakes are millions of times higher – for good or evil. As Carl Sagan wrote on the costs of nuclear war in Foreign Affairs: A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction **than for** the more modest nuclear wars that kill “only” hundreds of **millions of people**. There are many other possible measures of the potential loss–including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. We’re glad the Romans didn’t let humanity go extinct, since it means that all of modern civilisation has been able to exist. We think we owe a similar responsibility to the people who will come after us, assuming (as we believe) that they are likely to lead fulfilling lives. It would be reckless and unjust to endanger their existence just to make ourselves better off in the short-term. It’s not just that there might be more people in the future. As Sagan also pointed out, no matter what you think is of value, there is potentially a lot more of it in the future. Future civilisation could create a world without need or want, and make mindblowing intellectual and artistic achievements. We could build a far more just and virtuous society. And there’s no in-principle reason why civilisation couldn’t reach other planets, of which there are some 100 billion in our galaxy.26 If we let civilisation end, then none of this can ever happen. We’re unsure whether this great future will really happen, but that’s all the more reason to keep civilisation going so we have a chance to find out. Failing to pass on the torch to the next generation might be the worst thing we could ever do. So, a couple of percent risk that civilisation ends seems likely to be the biggest issue facing the world today. What’s also striking is just how neglected these risks are. Why these risks are some of the most neglected global issues Here is how much money per year goes into some important causes:27 As you can see, we spend a vast amount of resources on R&D to develop even more powerful technology. We also expend a lot in a (possibly misguided) attempt to improve our lives by buying luxury goods. Far less is spent mitigating catastrophic risks from climate change. Welfare spending in the US alone dwarfs global spending on climate change. But climate change still receives enormous amounts of money compared to some of these other risks we’ve covered. We roughly estimate that the prevention of extreme global pandemics receives under 300 times less, even though the size of the risk seems about the same. Research to avoid accidents from AI systems is the most neglected of all, perhaps receiving 100-times fewer resources again, at around only $10m per year. You’d find a similar picture if you looked at the number of people working on these risks rather than money spent, but it’s easier to get figures for money. If we look at scientific attention instead, we see a similar picture of neglect (though, some of the individual risks receive significant attention, such as climate change): Our impression is that if you look at political attention, you’d find a similar picture to the funding figures. An overwhelming amount of political attention goes on concrete issues that help the present generation in the short-term, since that’s what gets votes. Catastrophic risks are far more neglected. Then, among the catastrophic risks, climate change gets the most attention, while issues like pandemics and AI are the most neglected. This neglect in resources, scientific study and political attention is exactly what you’d expect to happen from the underlying economics, and are why the area presents an opportunity for people who want to make the world a better place. First, these risks aren’t the responsibility of any single nation. Suppose the US invested heavily to prevent climate change. This benefits everyone in the world, but only about 5% of the world’s population lives in the US, so US citizens would only receive 5% of the benefits of this spending. This means the US will dramatically underinvest in these efforts compared to how much they’re worth to the world. And the same is true of every other country. This could be solved if we could all coordinate — if every nation agreed to contribute its fair share to reducing climate change, then all nations would benefit by avoiding its worst effects. Unfortunately, from the perspective of each individual nation, it’s better if every other country reduces their emissions, while leaving their own economy unhampered. So, there’s an incentive for each nation to defect from climate agreements, and this is why so little progress gets made (it’s a prisoner’s dilemma). And in fact, this dramatically understates the problem. The greatest beneficiaries of efforts to reduce catastrophic risks are future generations. They have no way to stand up for their interests, whether economically or politically. If future generations could vote in our elections, then they’d vote overwhelmingly in favour of safer policies. Likewise, if future generations could send money back in time, they’d be willing to pay us huge amounts of money to reduce these risks. (Technically, reducing these risks creates a trans-generational, global public good, which should make them among the most neglected ways to do good.) Our current system does a poor job of protecting future generations. We know people who have spoken to top government officials in the UK, and many want to do something about these risks, but they say the pressures of the news and election cycle make it hard to focus on them. In most countries, there is no government agency that naturally has mitigation of these risks in its remit. This is a depressing situation, but it’s also an opportunity. For people who do want to make the world a better place, this lack of attention means there are lots high-impact ways to help. What can be done about these risks? We’ve covered the scale and neglectedness of these issues, but what about the third element of our framework, solvability? It’s less certain that we can make progress on these issues than more conventional areas like global health. It’s much easier to measure our impact on health (at least in the short-run) and we have decades of evidence on what works. This means working to reduce catastrophic risks looks worse on solvability. However, there is still much we can do, and given the huge scale and neglectedness of these risks, they still seem like the most urgent issues. We’ll sketch out some ways to reduce these risks, divided into three broad categories: 1. Targeted efforts to reduce specific risks One approach is to address each risk directly. There are many concrete proposals for dealing with each, such as the following: Many experts agree that better disease surveillance would reduce the risk of pandemics. This could involve improved technology or better collection and aggregation of existing data, to help us spot new pandemics faster. And the faster you can spot a new pandemic, the easier it is to manage. There are many ways to reduce climate change, such as helping to develop better solar panels, or introducing a carbon tax. With AI, we can do research into the “control problem” within computer science, to reduce the chance of unintended damage from powerful AI systems. A recent paper, Concrete problems in AI safety, outlines some specific topics, but only about 20 people work full-time on similar research today. In nuclear security, many experts think that the deterrence benefits of nuclear weapons could be maintained with far smaller stockpiles. But, lower stockpiles would also reduce the risks of accidents, as well as the chance that a nuclear war, if it occurred, would end civilisation. We go into more depth on what you can do to tackle each risk within our problem profiles: AI safety Pandemic prevention Nuclear security Run-away climate change We don’t focus on naturally caused risks in this section, because they’re much less likely and we’re already doing a lot to deal with some of them. Improved wealth and technology makes us more resilient to natural risks, and a huge amount of effort already goes into getting more of these. 2. Broad efforts to reduce risks Rather than try to reduce each risk individually, we can try to make civilisation generally better at managing them. The “broad” efforts help to reduce all the threats at once, even those we haven’t thought of yet. For instance, there are key decision-makers, often in government, who will need to manage these risks as they arise. If we could improve the decision-making ability of these people and institutions, then it would help to make society in general more resilient, and solve many other problems. Recent research has uncovered lots of ways to improve decision-making, but most of it hasn’t yet been implemented. At the same time, few people are working on the issue. We go into more depth in our write-up of improving institutional decision-making. Another example is that we could try to make it easier for civilisation to rebound from a catastrophe. The Global Seed Vault is a frozen vault in the Arctic, which contains the seeds of many important crop varieties, reducing the chance we lose an important species. Melting water recently entered the tunnel leading to the vault due, ironically, to climate change, so could probably use more funding. There are lots of other projects like this we could do to preserve knowledge. Similarly, we could create better disaster shelters, which would reduce the chance of extinction from pandemics, nuclear winter and asteroids (though not AI), while also increasing the chance of a recovery after a disaster. Right now, these measures don’t seem as effective as reducing the risks in the first place, but they still help. A more neglected, and perhaps much cheaper option is to create alternative food sources, such as those that be produced without light, and could be quickly scaled up in a prolonged winter. Since broad efforts help even if we’re not sure about the details of the risks, they’re more attractive the more uncertain you are. As you get closer to the risks, you should gradually reallocate resources from broad to targeted efforts (read more). We expect there are many more promising broad interventions, but it’s an area where little research has been done. For instance, another approach could involve improving international coordination. Since these risks are caused by humanity, they can be prevented by humanity, but what stops us is the difficulty of coordination. For instance, Russia doesn’t want to disarm because it would put it at a disadvantage compared to the US, and vice versa, even though both countries would be better off if there were no possibility of nuclear war. However, it might be possible to improve our ability to coordinate as a civilisation, such as by improving foreign relations or developing better international institutions. We’re keen to see more research into these kinds of proposals. Mainstream efforts to do good like improving education and international development can also help to make society more resilient and wise, and so also contribute to reducing catastrophic risks. For instance, a better educated population would probably elect more enlightened leaders (cough). Richer countries are better able to prevent pandemics — it’s no accident that Ebola took hold in some of the poorest parts of West Africa. But, we don’t see education and health as the best areas to focus on for two reasons. First, these areas are far less neglected than the more unconventional approaches we’ve covered. In fact, improving education is perhaps the most popular cause for people who want to do good, and in the US alone, receives 800 billion dollars of government funding, and another trillion dollars of private funding. Second, these approaches have much more diffuse effects on reducing these risks — you’d have to improve education on a very large scale to have any noticeable effect. We prefer to focus on more targeted and neglected solutions. 3. Learning more and building capacity We’re highly uncertain about which risks are biggest, what is best to do about them, and whether our whole picture of global priorities might be totally wrong. This means that another key goal is to learn more about all of these issues. We can learn more by simply trying to reduce these risks and seeing what progress can be made. However, we think the most neglected and important way to learn more right now is to do “global priorities research”. This is a combination of economics and moral philosophy, which aims to answer high-level questions about the most important issues for humanity. There are only a handful of researchers working full-time on these issues. Another way to handle uncertainty is to build up resources that can be deployed in the future when you have more information. One way of doing this is to earn and save money. You can also invest in your career capital, especially your transferable skills and influential connections, so that you can achieve more in the future. However, we think that a potentially better approach than either of these is to build a high-quality community that’s focused on reducing these risks, whatever they turn out to be. The reason this can be better is that it’s possible to grow the capacity of a community faster than you can grow your individual wealth or career capital. For instance, if you spent a year doing targeted one-on-one outreach, it’s not out of the question to find one other person with relevant expertise to join you. This would be an annual return to the cause of about 100%. Right now, we are focused on building the effective altruism community, which contains many people who want to reduce these risks. Moreover, the recent rate of growth, and studies of specific efforts to grow the community, suggest that high rates of return are possible. However, we expect that other community building efforts will also be valuable. It would be great to see a community of scientists trying to promote a culture of safety in academia. It would be great to see a community of policymakers who want to try to reduce these risks, and make government have more concern for future generations. Given how few people actively work on reducing these risks, we expect that there’s a lot that could be done to build a movement around them. In total, how effective is it to reduce these risks? Considering all the approaches to reducing these risks, and how few resources are devoted to some of them, it seems like substantial progress is possible. In fact, even if we only consider the impact of these risks on the present generation (ignoring any benefits to future generations), they’re plausibly the top priority. Here are some very rough and simplified figures to show how this could be possible. It seems plausible to us that $100 billion spent on reducing extinction risk could reduce it by over 1% over the next century. A one percentage point reduction in the risk would be expected to save about 100 million lives among the present generation (1% of about 10 billion people alive today). This would mean the investment would save lives for only $1000 per person. Greg Lewis has made a more detailed estimate, arriving at a mean of $9200 per life saved in the present generation.28 There are also more estimates in the thread. We think Greg is likely too conservative, because he assumes the risk of extinction is only 1% over the next century, when our estimate is that it’s several times higher. We also think the next billion dollars spent on reducing extinction risk could cause a larger reduction in the risk than Greg assumes (note that this is only true if the billion were spent on the most neglected issues like AI safety and biorisk, rather than climate change which already receives hundreds of billions of dollars of investment). We wouldn’t be surprised if the cost per present lives saved for the next one billion dollars invested in reducing extinction risk were under $100. GiveWell’s top recommended charity, Against Malaria Foundation (AMF), is often presented as one of the best ways to help the present generation and saves lives for around $7500 (2017 figures).29 So these estimates would put extinction risk reduction as better or in the same ballpark cost-effectiveness as AMF for saving lives in the present generation — a charity that was specifically selected for being outstanding on that dimension. Likewise, we think that if 10,000 talented young people focused their careers on these risks, they could achieve something like a 1% reduction in the risks. That would mean that each person would save 1000 lives over their careers in the present generation, which is probably better than what they could save by earning to give and donating to The Against Malaria Foundation.30 In one sense, these are unfair comparisons, because GiveWell’s estimate is far more solid and well-researched, whereas our estimate is more of an informed guess. There may also be better ways to help the present generation than AMF (e.g. policy advocacy). However, we’ve also dramatically understated the benefits of reducing extinction risks. The main reason to safeguard civilisation is not to benefit the present generation, but to benefit future generations. We ignored them in this estimate. If we also consider future generations, then the effectiveness of reducing extinction risks is orders of magnitude higher, and it’s hard to imagine a more urgent priority right now. Now you can either read some responses to these arguments, or skip ahead to practical ways to contribute. Who shouldn’t prioritise safeguarding the future? The arguments presented rest on some assumptions that not everyone will accept. Here we present some of the better responses to these arguments. You need to focus more on your friends and family We’re only talking about what the priority should be if you are trying to help people in general, treating everyone’s interests as equal (what philosophers sometimes call “impartial altruism”). Most people care about helping others to some degree: if you can help a stranger with little cost, that’s a good thing to do. People also care about making their own lives go well, and looking after their friends and family, and we’re the same. How to balance these priorities is a difficult question. If you’re in the fortunate position to be able to contribute to helping the world, then we think safeguarding the future should be where to focus. We list concrete ways to get involved in the next section. Otherwise, you might need to focus on your personal life right now, contributing on the side, or in the future. You think the risks are much lower than we’ve argued We don’t have robust estimates of many of the human-caused risks, so you could try to make your own estimates and conclude that they’re much lower than we’ve made out. If they were sufficiently low, then reducing them would cease to be the top priority. We don’t find this plausible for the reasons covered. If you consider all the potential risks, it seems hard to be confident they’re under 1% over the century, and even a 1% risk probably warrants much more action than we currently see. You think there’s almost nothing more we can do about the risks We rate these risks as less “solvable” than issues like global health, so expect progress to be harder per dollar. That said, we think their scale and neglectedness more than makes up for this, and so they end up more effective in expectation. Many people think effective altruism is about only supporting “proven” interventions, but that’s a myth. It’s worth taking interventions that only have a small chance of paying off, if the upside is high enough. The leading funder in the community now advocates an approach of “hits-based giving”. However, if you were much more pessimistic about the chances of progress than us, then it might be better to work on more conventional issues, such as global health. Personally, we might switch to a different issue if there were two orders of magnitude more resources invested in reducing these risks. But that’s a long way off from today. A related response is that we’re already taking the best interventions to reduce these risks. This would mean that the risks don’t warrant a change in practical priorities. For instance, we mentioned earlier that education probably helps to reduce the risks. If you thought education was the best response (perhaps because you’re very uncertain which risks will be most urgent), then because we already invest a huge amount in education, you might think the situation is already handled. We don’t find this plausible because, as listed, there are lots of untaken opportunities to reduce these risks that seem more targeted and neglected. Another example like this is that economists sometimes claim that we should just focus on economic growth, since that will put us in the best possible position to handle the risks in the future. We don’t find this plausible because some types of economic growth increase the risks (e.g. the discovery of new weapons), so it’s unclear that economic growth is a top way to reduce the risks. Instead, we’d at least focus on differential technological development, or the other more targeted efforts listed above. You think there’s a better way of helping the future Although reducing these risks is worth it for the present generation, much of their importance comes from their long-term effects — once civilisation ends, we give up the entire future. You might think there are other actions the present generation could take that would have very long-term effects, and these could be similarly important to reducing the risk of extinction. In particular, we might be able to improve the quality of the future by preventing our civilization from getting locked into bad outcomes permanently. This is going to get a bit sci-fi, but bear with us. One possibility that has been floated is that new technology, like extreme surveillance or psychological conditioning, could make it possible to create a totalitarian government that could never be ended. This would be the 1984 and Brave New World scenario respectively. If this government were bad, then civilisation might have a fate worse than extinction by causing us to suffer for millennia. Others have raised the concern that the development of advanced AI systems could cause terrible harm if it is done irresponsibly, perhaps because there is a conflict between several groups raising to develop the technology. In particular, if at some point in the future, developing these systems involves the creation of sentient digital minds, their wellbeing could become incredibly important. Risks of a future that contains an astronomical amount of suffering have been called “s-risks”.31 If there is something we can do today to prevent an s-risk from happening (for instance, through targeted research in technical AI safety and AI governance), it could be even more important. Another area to look is major technological transitions. We’ve mentioned the dangers of genetic engineering and artificial intelligence in this piece, but these technologies could also create a second industrial revolution and do a huge amount of good once deployed. There might be things we can do to increase the likelihood of a good transition, rather than decrease the risk of a bad transition. This has been called trying to increase “existential hope” rather than decrease “existential risk”.32 We agree that there might be other ways that we can have very long-term effects, and these might be more pressing than reducing the risk of extinction. However, most of these proposals are not yet as well worked out, and we’re not sure about what to do about them. The main practical upshot of considering these other ways to impact the future, is that we think it’s even more important to positively manage the transition to new transformative technologies, like AI. It also makes us keener to see more global priorities research looking into these issues. Overall, we still think it makes sense to first focus on reducing extinction risks, and then after that, we can turn our attention to other ways to help the future. One way to help the future we don’t think is a contender is speeding it up. Some people who want to help the future focus on bringing about technological progress, like developing new vaccines, and it’s true that these create long-term benefits. However, we think what most matters from a long-term perspective is where we end up, rather than how fast we get there. Discovering a new vaccine probably means we get it earlier, rather than making it happen at all. Moreover, since technology is also the cause of many of these risks, it’s not clear how much speeding it up helps in the short-term. Speeding up progress is also far less neglected, since it benefits the present generation too. As we covered, over 1 trillion dollars is spent each year on R&D to develop new technology. So, speed-ups are both less important and less neglected. To read more about other ways of helping future generations, see Chapter 3 of On the Overwhelming Importance of Shaping the Far Future by Dr. Nick Beckstead You’re confident the future will be short or bad If you think it’s virtually guaranteed that civilisation won’t last a long time, then the value of reducing these risks is significantly reduced (though perhaps still worth taking to help the present generation). We agree there’s a significant chance civilisation ends soon (which is why this issue is so important), but we also think there’s a large enough chance that it could last a very long time, which makes the future worth fighting for. Similarly, if you think it’s likely the future will be more bad than good, then the value of reducing these risks goes down (or if we have much more obligation to reduce suffering than increase wellbeing). We don’t think this is likely, however, because people want the future to be good, so we’ll try to make it more good than bad. We also think that there has been significant moral progress over the last few centuries (due to the trends noted earlier), and we’re optimistic this will continue. See more discussion in footnote 11.11 What’s more, even if you’re not sure how good the future will be, or suspect it will be bad in ways we may be able to prevent in the future, you may want civilisation to survive and keep its options open. People in the future will have much more time to study whether it’s desirable for civilisation to expand, stay the same size, or shrink. If you think there’s a good chance we will be able to act on those moral concerns, that’s a good reason to leave any final decisions to the wisdom of future generations. Overall, we’re highly uncertain about these big-picture questions, but that generally makes us more concerned to avoid making any irreversible commitments.33 Beyond that, you should likely put your attention into ways to decrease the chance that the future will be bad, such as avoiding s-risks. You’re confident we have much stronger moral obligations to help the present generation If you think we have much stronger obligations to the present generation than future generations (such as person-affecting views of ethics), then the importance of reducing these risks would go down. Personally, we don’t think these views are particularly compelling. That said, we’ve argued that even if you ignore future generations, these risks seem worth addressing. The efforts suggested could still save the lives of the present generation relatively cheaply, and they could avoid lots of suffering from medium-sized disasters. What’s more, if you’re uncertain about whether we have moral obligations to future generations, then you should again try to keep your options open, and that means safeguarding civilisation. Nevertheless, if you combined the view that we don’t have large obligations to future generations with the position that the risks are also relatively unsolvable, or that there is no useful research to be done, then another way to help present generations could come out on top. This might mean working on global health, mental health or speeding up technology. Alternatively, you might think there’s another moral issue that’s more important, such as factory farming. What can you do to help? Some areas to focus on Our best evidence suggests that we’re the only intelligent life in the observable universe.34 Might we be the generation that extinguishes this life, and leaves the universe barren for the rest of eternity? Let’s see how you can help avoid that.

### Solvency

#### Anti-trust fails --- Litigation is drawn out and splintered efforts mean wins are small and inconsequential

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There is clear legal, regulatory, and political momentum behind taking action, and soon there will be no turning back. The question is: Is anti-tech antitrust the right tool to address America’s biggest technology problem?

Historic as this push to challenge the power of these companies may be, the long history of antitrust action against Big Tech is not encouraging — particularly if you are hoping for a big company to be broken up outright. In 1956, the [Bell System](https://www.beatriceco.com/bti/porticus/bell/bellsystem_history.html) monopoly was left intact after a seven-year legal saga. The antitrust action against IBM lasted 13 years. Outcome? You guessed it: The behemoth remained unbroken. The 1998 action against Microsoft, in which the government argued that bundling of applications programs into Microsoft’s dominant operating system constituted monopolistic actions, ended three years later with a settlement and the company intact.

Today’s technology industry is more complex than it was in the time of the Bell System, IBM, or Microsoft cases. Moreover, while public sentiment had [swung against Big Tech](https://www.pewresearch.org/fact-tank/2019/07/29/americans-have-become-much-less-positive-about-tech-companies-impact-on-the-u-s/) after the 2016 presidential elections, revelations of social media manipulation, and breaches of privacy, it [has also improved](https://www.axios.com/newsletters/axios-login-ceeec506-e760-4346-97ed-d4b493f16743.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axioslogin&stream=top) during Covid-19, as Americans rely on tech products more than ever.

Any antitrust action against these companies will be long and drawn-out — no matter its conclusion — for a number of reasons. First, the complaints against the industry are varied, ranging from anti-competitiveness to privacy issues, data protection, and vulnerability to misinformation. Second, there are multiple large companies in the crosshairs, with different products and different suggested remedies. Third, multiple agencies are pursuing action, from the DOJ and the Federal Trade Commission to the House initiative led by Democrats to the Senate initiative led by Republicans, and each has a different approach, motivation, and timeline. Fourth, the technology itself keeps evolving. Finally, there is a precedent for settling with the tech industry: Previous antitrust actions have resulted in settlements or consent decrees where lawmakers got something from each of the companies in exchange for leaving them intact, which might well encourage companies to drag the fight out as long as possible. Putting these considerations together, it reasonable to expect a lengthy process that risks frittering away the current momentum, and which ends with a settlement that resolves issues on the margins.

#### Hovenkamp says antitrust should be REMOVED for collusion not that it should be APPLIED to the NCAA --- That zero’s solvency

### Advantage 3

#### 4. Growth is sustainable AND solves existential risks

hÉigeartaigh 17 – Professor @ Cambridge, PhD in Genomics from Trinity College Dublin (Sean, “Technological Wild Cards: Existential Risk and a Changing Humanity”, <https://www.bbvaopenmind.com/en/articles/technological-wild-cards-existential-risk-and-a-changing-humanity/>, Accessed 3-7-2019)

Technological progress now offers us a vision of a remarkable future. The advances that have brought us onto an unsustainable pathway have also raised the quality of life dramatically for many, and have unlocked scientific directions that can lead us to a safer, cleaner, more sustainable world. With the right developments and applications of technology, in concert with advances in social, democratic, and distributional processes globally, progress can be made on all of the challenges discussed here. Advances in renewable energy and related technologies, and more efficient energy use—advances that are likely to be accelerated by progress in technologies such as artificial intelligence—can bring us to a point of zero-carbon emissions. New manufacturing capabilities provided by synthetic biology may provide cleaner ways of producing products and degrading waste. A greater scientific understanding of our natural world and the ecosystem services on which we rely will aid us in plotting a trajectory whereby critical environmental systems are maintained while allowing human flourishing. Even advances in education and women’s rights globally, which will play a role in achieving a stable global population, can be aided specifically by the information, coordination, and education tools that technology provides, and more generally by growing prosperity in the relevant parts of the world. There are catastrophic and existential risks that we will simply not be able to overcome without advances in science and technology. These include possible pandemic outbreaks, whether natural or engineered. The early identification of incoming asteroids, and approaches to shift their path, is a topic of active research at NASA and elsewhere. While currently there are no known techniques to prevent or mitigate a supervolcanic eruption, this may not be the case with the tools at our disposal a century from now. And in the longer run, a civilization that has spread permanently beyond the earth, enabled by advances in spaceflight, manufacturing, robotics, and terraforming, is one that is much more likely to endure. However, the breathtaking power of the tools we are developing is not to be taken lightly. We have been very lucky to muddle through the advent of nuclear weapons without a global catastrophe. And within this century, it is realistic to expect that we will be able to rewrite much of biology to our purposes, intervene deliberately and in a large-scale way in the workings of our global climate, and even develop agents with intelligence that is fundamentally alien to ours, and may vastly surpass our own in some or even most domains—a development that would have uniquely unpredictable consequences.

# 2NC

## DPA CP

### 2NC --- PDCP

#### The CP is a regulation not a prohibition

James Broaddus 50. February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220. https://casetext.com/case/city-of-meadville-v-caselman-1

"Under power conferred on cities of the fourth class `to regulate and license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.'" (Citing text writers and cases.)

#### Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

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

What Does Prohibited Mean

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

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

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

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

What Does Restricted Mean

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

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### That is the most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### That means the counterplan is plan minus.

Antitrust Modernization Commission 07 Deborah A. Garza, Chair. Jonathan R. Yarowsky, Vice-Chair. Bobby R. Burchfield. W. Stephen Cannon. Dennis W. Carlton. Makan Delrahim. Jonathan M. Jacobson. Donald G. Kempf, Jr. Sanford M. Litvack. John H. Shenefield. Debra A. Valentine. John L. Warden. “Report and Recommendations”. https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

Other exemptions apply to narrow areas but provide a broader immunity—often complete immunity from the antitrust laws. Examples include antitrust immunity for marketing alliances between domestic and foreign airlines that are approved by the Department of Transportation;79 the Charitable Donation Antitrust Immunity Act, which gives antitrust immunity to charitable institutions that set the annuity rate for gift annuities or charitable remainder trust agreements;80 the Defense Production Act, which provides antitrust immunity for conduct undertaken in developing or carrying out a voluntary agreement or plan of action for the President that is necessary for the defense of the United States;81 the NeedBased Educational Aid Act, which provides an antitrust exemption to certain joint actions taken by institutions of higher education regarding awards of financial aid to students;82 and the Soft Drink Interbrand Competition Act, which provides an antitrust exemption for the grant of exclusive territories to soft-drink bottlers by soft-drink trademark holders in trademark licensing agreements.83

### 2NC --- PDB

#### Perm do both fails --- It links to the Pandemic Response DA. The net benefit is “plan bad” not internal. The plan violates the DPA --- it protects ANY antitrust violation.

FEMA 21. Posted by the Federal Emergency Management Agency on May 28, 2021. “Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID-19”. https://www.regulations.gov/document/FEMA-2020-0016-0053

IV. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

#### 1. The plan would HAVE to amend the statute to supersede presidential authority.

Michael H. Cecire and Heidi M. Peters 20. Michael H. Cecire, Analyst in Intergovernmental Relations and Economic Development Policy. Heidi M. Peters, Analyst in U.S. Defense Acquisition Policy. “The Defense Production Act of 1950: History, Authorities, and Considerations for Congress” Updated March 2, 2020. https://www.everycrsreport.com/reports/R43767.html

Congress may consider enhancing its oversight of executive branch activities related to the DPA in a number of ways. To enhance oversight, Congress could expand executive branch reporting requirements, track and enforce rulemaking requirements, review the activities of the Defense Production Act Committee, and broaden the committee oversight jurisdiction of the DPA in Congress. Congress may also consider amending the DPA, either by creating new authorities or repealing existing ones. In addition, Congress may consider amending the definitions of the DPA to expand or restrict the DPA’s scope, amending the statute to supersede the President’s delegation of DPA authorities made in E.O. 13603, or consider adjusting future appropriations to the DPA Fund in order to manage the scope of Title III projects initiated by the President.

#### That implicitly repeals the whole DPA

Jesse W. Markham Jr. 09. Marshall P. Madison Professor of Law, University of San Francisco School of Law. “The Supreme Court's New Implied Repeal Doctrine: Expanding Judicial Power to Rewrite Legislation under the Ballooning Conception of Plain.” Repugnancy, 45 GONZ. L. REV. 437 (2009).

In Credit Suisse, the Court lurched past the traditional narrow confines of the doctrine and recast it in terms that will most likely give rise to more frequent displacements of legislative enactments.14 Credit Suisse acknowledges no departure from precedent.' 5 However, the Court has, in fact, greatly expanded the implied repeal doctrine. As it is currently employed by the Court, the new doctrine bears little resemblance to precedent, obscures a previously simple rule, and exhibits a profound disregard for the sound policy underpinnings of this particular canon of legislative interpretation. By expanding, and even rewording, the "plain repugnancy" standard and introducing a vague factor-based approach, the Court invites the judiciary to find legislative inconsistencies in new and creative ways, placing the courts in an enlarged role of **refashioning legislative enactments to resolve** these "**inconsistencies**."' 6 Moreover, the Court has dismantled the traditional implied repeal rule without explaining why it believes the traditional doctrine should be abandoned. Indeed, one of the Court's vaguely expressed rationales for displacing antitrust rules in Credit Suisse-an assertion that antitrust courts are particularly error-prone-is offered without empirical or theoretical support.'7 Viewed more broadly beyond the antitrust law context in Credit Suisse, the restated implied repeal doctrine lacks an analytical justification for its departure from precedent.

The Court's reformulation of the implied repeal doctrine is bad law, bad policy, and should be undone. In Credit Suisse, the Court divested private plaintiffs of antitrust remedies for conduct that securities regulators had already concluded were both anticompetitive and subversive of public confidence in capital markets. 8 Unequivocally, the antitrust case challenged conduct that was illegal under securities regulatory law.19 Although securities regulation and antitrust rules prohibited the conduct in question for overlapping reasons, the revised implied repeal doctrine employed by the Court allowed it to find these congruent laws to be "plainly inconsistent" with one another.20 Taking direction from the Supreme Court's new implied repeal doctrine, courts are encouraged-or at least no longer discouraged--to find inconsistencies between laws they do not like and laws they prefer and, then, narrow or repeal the disfavored statutes accordingly. Indeed, Justice Stevens's concurrence suggests that this is essentially what the Court did in Credit Suisse when it disparaged the private antitrust enforcement process as error prone and found it 21 displaced by securities regulation the Court applied with undisguised reverence.

#### 2 --- Signal ---companies are watching the DPA’s immunity --- the plan says it won’t apply in the next pandemic.

Kathleen Murphy 9/20/21. Senior Reporter, FTC Watch. "As pandemic persists, companies can still collaborate, new memo says". No Publication. 9-20-2021. https://www.mlexwatch.com/articles/13511/print?section=ftcwatch

For companies authorized to work together in response to the Covid-19 pandemic under the Defense Production Act, immunity from antitrust prosecution is a perk.

In combating a virus that has killed more than 660,380 US citizens, the government-sponsored voluntary agreements allow companies to collaborate in ways that otherwise would expose them to antitrust liability.

The Federal Trade Commission said the country’s defense against the coronavirus couldn’t be achieved with less anticompetitive effects in a recent memo to the Department of Justice, while recognizing defense plans could allow anticompetitive concerted action. In other words, the 1950 DPA law that lets the president direct “materials, services and facilities” can be leveraged in the vaccination and test kit supply chain.

Competitors who might usually be at each other’s throats can find a way to share information, facilities, or intellectual property they may not normally share. The DPA enables the president to award contracts that supersede any other contract to “promote the national defense.”

But the pandemic has unveiled questions about how closely competitors should work together when they’re united for the common good, with the DPA empowering the government to prioritize company production to further national security goals, said Kathryn Mims, an antitrust partner at White & Case LLP.

Section 708 of the DPA offers antitrust immunity. “It's certainly not a carte blanche to do any kind of collaboration that you want. You have to stay within the borders of the authorized, voluntary agreement,” Mims said.

The law establishes a limited antitrust exemption, which allows companies to get to the front of the line on orders for ingredients and supplies. In March 2021, the Biden administration brokered a deal between pharmaceutical rivals Merck & Co. and Johnson & Johnson to increase the vaccine supply.

President Joe Biden also invoked the DPA to equip Merck facilities for manufacturing the J&J vaccine. Test kit manufacturers are next. On Sept. 9, Biden said he’ll “use the Defense Production Act to increase production of rapid tests, including those that you can use at home.”

FTC signed off

US defense against the Covid-19 pandemic, including making test kits and vaccines, meant the DOJ had to consult with the FTC on whether the defense purposes of the plans could be achieved through less anticompetitive effects. The Federal Emergency Management Agency initiated the inquiry to DOJ under the law, requiring the FTC to make the determination regarding preparedness.

Companies ineligible for the DPA’s Section 708 antitrust immunity may still gain protection from antitrust prosecution through an expedited business review letter from DOJ or the FTC. The DOJ’s antitrust division committed to responding to these pandemic-related letter requests in seven days.

The caveat is that specific requirements of the DPA must be met, and the letter doesn’t provide statutory antitrust immunity, just negates any criminal intent to commit an antitrust violation. The DOJ has never prosecuted a case after approving a business review letter, offering a sort of de facto antitrust immunity.

‘Anticompetitive concerted action’

At the FTC, implementation of the DPA has entailed verifying it’s a real emergency. Then-acting Chair Rebecca Kelly Slaughter told DOJ in May 2021 that while the plans are “still potentially allowing anticompetitive concerted action, the plans of action limit that behavior to circumstances with legitimate exigencies.”

Slaughter’s memo to Richard Powers, acting assistant attorney general for antitrust, released via a Freedom of Information Act request, helps clear the way for companies to team up to resolve the pandemic.

Meanwhile, the law’s implementation has potential long-term effects on companies’ relationships with customers and suppliers, and the law can have wide-ranging applications.

Is it something that manufacturers worry about?

Anne Pritchett of the Pharmaceutical Research and Manufacturers of America said there is concern over how broadly or narrowly the various authorities under the DPA could be extended, including for future pandemic preparedness.

#### Any ambiguity means they won’t cooperate!

Jeffrey S. Jacobovitz and Micah Kanters 20. Jeffrey S. Jacobovitz, Partner @ Arnall Golden Gregory. Micah Kanters, Associate. "The Impact of Antitrust Enforcement in a COVID-19 Environment". Arnall Golden Gregory LLP. 3-24-2020. https://www.agg.com/news-insights/publications/the-impact-of-antitrust-enforcement-in-a-covid-19-environment/

Further, there remains significant potential for increased use of the Defense Production Act (“DPA”), which provides the President authority to approve “associations of private interests” in support of national defense and exempt those associations from antitrust liability. While use of that authority has been somewhat limited, recent actions indicate it may be increasingly relied upon to address shortages of COVID-19 related supplies. For example, on April 2, 2020, President Trump invoked the DPA directing 3M and six major medical device companies to produce PPE and ventilators. The federal government is likely to continue utilizing this authority in the coming months, particularly as the CARES Act amended the DPA to remove certain funding limitations.

While the COVID-19 pandemic has thrust both businesses and governments into uncharted territory, the long standing antitrust statutes in the United States remain unchanged. Businesses must remain vigilant in ensuring they avoid crossing the line from appropriate cooperation into anticompetitive behaviors that may ultimately result in civil or criminal penalties. To that end, prospective joint ventures and collaborative activities should be submitted to the Department of Justice and Federal Trade Commission whenever possible. While there are indications of somewhat relaxed restrictions, the ambiguity of that shift necessitates continued careful attention to antitrust statutes and enforcement.

### 2AC --- AT: Done before

#### Plan is unprecedented --- The DPA has Never been restricted

Lawson, 20 (Aidan Lawson, 6-3-2020, accessed on 11-4-2021, Yale School of Management, "Usage of the Defense Production Act throughout history and to combat COVID-19", https://som.yale.edu/blog/usage-of-the-defense-production-act-throughout-history-and-to-combat-covid-19)//Babcii

Four major amendments to the definition have been made since the DPA’s inception. In 1975, the **definition was expanded** to include space activity. The 1980 reauthorization of the Act designated energy as an essential material good. In 1994, the **scope of the DPA was significantly broadened** to incorporate emergency preparedness during natural disasters or other events that caused national emergencies under Title VI of the Stafford Act (see pp. 71 - 85). The fourth amendment in 2003 **added “critical infrastructure** protection and restoration” to the definition of national defense.

### 2NC --- AT: !D

#### Covid is uniqueness --- Best studies prove pandemics are increasing in both severity and frequency --- Innovation is essential to prevent invisible thresholds for extinction

Penn 21 (Michael Penn, Director of Communications, Marketing and Alumni Relations, Duke Global Health Initiative, citing William Pan, Ph.D., associate professor of global environmental health at Duke, Marco Marani, adjunct professor at Duke department of Global Health, where he previously was a professor of civil and environmental engineering and Anthony Parolari, Ph.D., of Marquette University, is a former Duke postdoctoral researcher, Gabriel Katul, Ph.D., the Theodore S. Coile Distinguished Professor of Hydrology and Micrometeorology at Duke, “Statistics Say Large Pandemics Are More Likely Than We Thought” Duke Global Health Institute, <https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought>)

The COVID-19 pandemic may be the deadliest viral outbreak the world has seen in more than a century. But statistically, such extreme events aren’t as rare as we may think, asserts a new analysis of novel disease outbreaks over the past 400 years. The study, appearing in the Proceedings of the National Academy of Sciences the week of Aug. 23, used a newly assembled record of past outbreaks to estimate the intensity of those events and the yearly probability of them recurring. It found the probability of a pandemic with similar impact to COVID-19 is about 2% in any year, meaning that someone born in the year 2000 would have about a 38% chance of experiencing one by now. And that probability is only growing, which the authors say highlights the need to adjust perceptions of pandemic risks and expectations for preparedness. “The most important takeaway is that large pandemics like COVID-19 and the Spanish flu are relatively likely,” said William Pan, Ph.D., associate professor of global environmental health at Duke and one of the paper’s co-authors. Understanding that pandemics aren’t so rare should raise the priority of efforts to prevent and control them in the future, he said. The study, led by Marco Marani, Ph.D., of the University of Padua in Italy, used new statistical methods to measure the scale and frequency of disease outbreaks for which there was no immediate medical intervention over the past four centuries. Their analysis, which covered a murderer’s row of pathogens including plague, smallpox, cholera, typhus and novel influenza viruses, found considerable variability in the rate at which pandemics have occurred in the past. But they also identified patterns that allowed them to describe the probabilities of similar-scale events happening again. In the case of the deadliest pandemic in modern history – the Spanish flu, which killed more than 30 million people between 1918 and 1920 -- the probability of a pandemic of similar magnitude occurring ranged from 0.3% to 1.9% per year over the time period studied. Taken another way, those figures mean it is statistically likely that a pandemic of such extreme scale would occur within the next 400 years. “ The most important takeaway is that large pandemics like COVID-19 and the Spanish flu are relatively likely. WILLIAM PAN — ASSOCIATE PROFESSOR OF GLOBAL ENVIRONMENTAL HEALTH In the case of the deadliest pandemic in modern history – the Spanish flu, which killed more than 30 million people between 1918 and 1920 -- the probability of a pandemic of similar magnitude occurring ranged from 0.3% to 1.9% per year over the time period studied. Taken another way, those figures mean it is statistically likely that a pandemic of such extreme scale would occur within the next 400 years. But the data also show the risk of intense outbreaks is growing rapidly. Based on the increasing rate at which novel pathogens such as SARS-CoV-2 have broken loose in human populations in the past 50 years, the study estimates that the probability of novel disease outbreaks will likely grow three-fold in the next few decades. Using this increased risk factor, the researchers estimate that a pandemic similar in scale to COVID-19 is likely within a span of 59 years, a result they write is “much lower than intuitively expected.” Although not included in the PNAS paper, they also calculated the probability of a pandemic capable of eliminating all human life, finding it statistically likely within the next 12,000 years. That is not to say we can count on a 59-year reprieve from a COVID-like pandemic, nor that we’re off the hook for a calamity on the scale of the Spanish flu for another 300 years. Such events are equally probable in any year during the span, said Gabriel Katul, Ph.D., the Theodore S. Coile Distinguished Professor of Hydrology and Micrometeorology at Duke and another of the paper’s authors. “When a 100-year flood occurs today, one may erroneously presume that one can afford to wait another 100 years before experiencing another such event,” Katul says. “This impression is false. One can get another 100-year flood the next year.” As an environmental health scientist, Pan can speculate on the reasons outbreaks are becoming more frequent, noting that population growth, changes in food systems, environmental degradation and more frequent contact between humans and disease-harboring animals all may be significant factors. He emphasizes the statistical analysis sought only to characterize the risks, not to explain what is driving them. But at the same time, he hopes the study will spark deeper exploration of the factors that may be making devastating pandemics more likely – and how to counteract them. “This points to the importance of early response to disease outbreaks and building capacity for pandemic surveillance at the local and global scales, as well as for setting a research agenda for understanding why large outbreaks are becoming more common,” Pan said.

#### Defense doesn’t assume secondary risks

Dennis Pamlin & Stuart Armstrong 15. \*Executive Project Manager Global Risks, Global Challenges Foundation. \*\*James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford. February 2015, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, p.30-93. https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability **to combine features** from different viruses272), its **death toll would be extreme**. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the **risk of a civilisation collapse** would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

### 2NC --- AT: Theory

#### Process counterplan are good – they force the aff to defend the implementation of their aff with nuance which encourages deep research and critical thinking skills

#### It’s also key to neg ground – this topic is enormous which should act as a filter for their offense

#### Their interpretation makes no sense – there’s no brightline and it ends up excluding all counterplans which decimates fairness

#### Our interpretation is that the negative gets counterplans that are competitive with the function of the aff –competition proves the theoretical legitimacy of the counterplan

#### Reject the arg not the team

## Sunbursting CP

### 2NC --- AT: PDCP

#### [2] - Resolved means certain – the counterplan isn’t because there’s the possibility the court refuses to follow up on their initial ruling

**OED 89** (Oxford English Dictionary, “Resolved,” Volume 13, p. 725)

Of the mind, etc.: **Freed from doubt or uncertainty**, fixed, settled. Obs.

#### “Should” means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

#### [3] - Should means immediate – the counterplan is not because it has to wait until new case law is taken up

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16) [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "Should" not only is used as a "present indicative" synonymous with ought but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an obligation and to be more than advisory); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an obligation to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) In praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future [in futurol]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### Substantial means at the present time

Words and Phrases 64 (40 W&P 759) (This edition of W&P is out of print – The page number no longer matches up to the current edition and I was unable to find the card in the new edition. However, this card is also available on google books, Judicial and statutory definitions of words and phrases, Volume 8, p. 7329)

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

# 1NR

## Sua-Sponte DA

### O/V

#### Turns solvency they said certainty key --- the ruling is perceived as illegitimate.

Luke Ryan, Summer 2017 [J.D., 2017, Fordham University School of Law “How The Party Presentation Rule Limits Judicial Discretion” St. Thomas journal of Complex Litigation <https://www.stu.edu/Portals/law/docs/academics/student-orgs/jcl/volumes/Volume%204/RyanLuke-EssayThePartyPresentationRule.pdf> //DMcD]

The party presentation rule—also known as the “norm against judicial issue creation” or “norm against sua sponte decision-making”—flows out of a judge’s neutral role in the adversarial system as one “who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” 15 While outside factual research is highly controversial and strongly discouraged because it raises evidentiary and due process concerns and infects the trial record that is vital on an appeal,16 outside legal research is not per se discouraged because of the judge’s unique responsibility to know the law and apply it to the facts correctly.17 Outside legal research and sua sponte decision-making becomes controversial, however, when judges disregard party autonomy and raise new legal arguments that were intentionally or accidentally omitted by the litigants.18 Such unilateral actions have the effect of helping one party at the expense of another and feed into the damaging narrative that “courts are more likely to raise an issue sua sponte if they think a case is really important or if the judges really want to reach a particular result.” 19 While most judges and legal scholars agree that sua sponte decision-making is not justified when used to help one side in an adversarial proceeding or to promote a judge’s personal agenda, many judges (and some legal scholars) believe the party presentation rule does not prohibit judicial creation of new legal arguments that support a litigant’s existing claims.20 Federal judges (and the federal courts21) have two important roles. First, in their “dispute resolution” capacity, judges are required to resolve concrete conflicts, between individual parties, involving particularized facts.22 Second, in their “law pronouncement” or “public values” role, judges are required “to make accurate statements about the meaning of the law that govern beyond the parameters of the parties and their dispute.” 23 Courts are usually able to perform each function without conflict, but tensions arise when an individual dispute that is poorly or insufficiently litigated has the potential to have an impact on precedent. In such circumstances, legal scholars, judges, and litigants will sometimes disagree about which role is supreme.24 The dispute resolution capacity provides the strongest justifications for an absolute party presentation rule. When viewing a judge’s responsibilities from this vantage, the rule preserves the essential and unique roles adversarial litigants and neutral judges play in the American legal system.25 “[J]udges are more likely to reach the ‘right’ legal answer when two parties, each with a stake in the matter, compete to present the most persuasive case to the court.” 26 Absolute preservation of the adversarial roles also creates buy-in by the parties and results in greater acceptance of a final judgment because the parties believe that they received a fair opportunity before the court.27 A second justification rests on principles of due process by ensuring that the parties have notice and an opportunity to respond to all issues and arguments considered by the judge.28 Here again, an absolute rule helps avoid the one-sided inconsistency that occurs when courts refuse to consider a party’s arguments that were not raised at the first opportunity, but remain free to entertain their own post-briefing ideas.29 Finally, the rule has beneficial practical effects to dispute resolution by conserving scarce judicial resources, preventing judicial activism and agenda setting, and ensuring efficient resolution of cases by identifying all relevant matters early in the litigation.30

#### Rule of law turns every impact

Greco 5 (Michael S., President – American Bar Association, Miami Daily Business Review, 52.42, 12-5, Factiva)

What makes the rule of law so important that it attracted such a distinguished community† First, because the rule of law is so central to everything the legal community stands for, both in the United States and around the world. And second, because we increasingly find that our nation's top international priorities-defeating terrorism, corruption and even the spread of deadly diseases-are being undone at the ground level by poor governance and lawlessness. As Rice eloquently told the gathering, "In a world where threats pass even through the most fortified boundaries, weak and poorly governed states enable disease to spread undetected, and corruption to multiply unchecked, and hateful ideologies to grow more violent and more vengeful." The only real antidote to these global threats is governments, in all corners of the world, that operate with just, transparent and consistent legal systems that are enforced by fair and independent judiciaries. These issues are not just the province of distant foreign governments. Building the rule of law must begin at home. Recent revelations in our own country-that the CIA has maintained secret prisons for foreign detainees-underscore the urgent need for an independent, nonpartisan commission to investigate our treatment of such prisoners.

#### Court legitimacy is key to effectively combat terrorism

Shapiro 3 (Jeremy, Nonresident Senior Fellow at the Brookings institute - Foreign Policy, Center on the United States and Europe, Project on International Order and Strategy, 3-1-2003, “French Lessons: The Importance of the Judicial System in Fighting Terrorism”, The Brookings Institute, https://www.brookings.edu/articles/french-lessons-the-importance-of-the-judicial-system-in-fighting-terrorism/)

The unique nature of terrorism means that maintaining the appearance of justice and democratic legitimacy will be much more important than in past wars. The terrorist threat is in a perpetual state of mutation and adaptation in response to government efforts to oppose it. The war on terrorism more closely resembles the war on drugs than World War II; it is unlikely to have any discernable endpoint, only irregular periods of calm. The French experience shows that ad-hoc anti-terrorist measures that have little basis in societal values and shallow support in public opinion may wither away during the periods of calm. In the U.S., there is an enormous reservoir of legitimacy, established by over 200 years of history and tradition, in the judiciary. That reservoir represents an important asset that the U.S. government can profit from to maintain long-term vigilance in this type of war.

#### Nuclear terrorism causes extinction

Hellman 8 (Martin, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engineering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

### 2NC --- 2AC 2

#### There’s a distinction between raising an issue and deciding a case sua sponte – courts actively avoid issuing sua sponte rulings.

Hills ’20 [Blake R; Prosecuting Attorney in Utah, former appellate clerk for the Tennessee Court of Criminal Appeals; 2020; “Sua Sponte Dismissals: Is Efficiency More Important than Procedural Fairness?”; <https://heinonline.org/HOL/Page?handle=hein.journals/umkc89&div=14&g_sent=1&casa_token=>; UMKC Law Review; accessed 9/15/21; TV]

There is a tremendous difference between a court raising an issue sua sponte and a court deciding an issue sua sponte. In the first instance, the court raises an issue it considers to be important and gives the parties an opportunity to respond before a ruling is made. In the second, the court raises an issue itself and rules on the issue without providing notice and an opportunity to respond. The first procedure is sometimes appropriate, the second is not-especially when it comes to dismissals.

Jurisdiction is the primary issue for a court to raise sua sponte.156 Indeed, the Supreme Court has stated, "federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press." 5 7 Likewise, courts should also raise the issues of ripeness 58 and standing'5 9 sua sponte.

Although jurisdiction is arguably the most important issue for a court to raise sua sponte, there are several others. For example, courts can raise the issue of sovereign immunity sua sponte.160 It may also be appropriate to raise an issue sua sponte to protect a litigant who is proceeding pro se. 161 A court may raise an issue sua sponte in order to prevent a miscarriage of justice.16 2 It may also be appropriate for courts to raise issues sua sponte when necessary to fulfill the courts' duties to define the law and to avoid exceeding the scope of the judicial role, to preserve judicial independence, to enforce constitutional restrictions on other branches of the government, and to effectuate constitutional exercises of legislative power.163 Essentially, courts should feel free to raise issues sua sponte when necessary to protect the integrity of the judicial system or to promote the ends of justice. As stated by Justice Stevens:

Trial judges are kept busy responding to motions, objections, and requests by the litigants. It is quite wrong, however, to assume that a judge is nothing more than a referee whose authority is limited to granting or denying motions advanced by the parties. As Learned Hand tersely noted, a "judge, at least in a federal court, is more than a moderator; he is affirmatively charged with securing a fair trial, and he must intervene sua sponte to that end, when necessary." That duty encompasses not only the avoidance of error before it occurs, but the correction of error that may have occurred earlier in a proceeding. 164

Justice Stevens is correct. A court is not simply a moderator who waits silently like a potted plant. But neither are the parties, and they should have an opportunity to respond to any issue raised by the court, especially an issue that could result in dismissal. A court can certainly raise issues sua sponte, but for the reasons discussed below, it should not decide issues sua sponte.

#### 2. That’s a distinction with a difference --- The plan is unprecedented

Frost ‘9 (Amanda; Professor of Law at the American University Washington College of Law, former clerk for Judge A. Raymond Randolph on the U.S. Court of Appeals for the D.C. Circuit, affiliated researcher at Oxford University’s Border Criminologies, Academic Fellow at the Pound Civil Justice Institute, member of the National Constitution Center’s Coalition of Freedom Advisory Board, J.D. from Harvard Law School; December 2009; “The Limits of Advocacy”; <http://www.jstor.org/stable/20684812>; Duke Law Journal, Vol. 59, No. 3; accessed 4/3/18; TV)

B. Issue Creation and the Goals of the Adversarial System Judicial issue creation is consistent with the rationales cited in support of the adversarial system, discussed in detail in Part I.185 Issue creation can enhance truth seeking without sacrificing a judge's impartiality or undermining litigant autonomy. Indeed, permitting a judge to introduce legal issues might answer, at least in small part, the most persistent criticism of adversarial procedure—that it fails when the parties' skills and resources are not evenly matched. The pages that follow seek to justify issue creation on adversary theory's own terms by demonstrating that the adversarial nature of dispute resolution can be maintained, along with the benefits that are claimed to arise from it, even when judges play a role in developing legal arguments. 1. Enhancing Truth Seeking. The adversarial system has been touted as the best method of determining the truth of the matter in dispute, and thus of reaching the right result in each case.186 The basic characteristics of adversary procedure—such as notice, a hearing, and an opportunity to present evidence and test an opponent's evidence— are lauded as essential to reaching the correct outcome.187 As the Supreme Court declared: "[0]ur legal tradition regards the adversary process as the best means of ascertaining truth and minimizing the risk of error."188 And yet to achieve this goal, there must be at least a rough equality in the resources and presentation skills of the advocates for either party—what Professor Frank Michelman, among others, refers to as "equipage equality"—that all too often does not exist. As one legal scholar observed, [o]ur adversary system is premised upon the idea that the most accurate and acceptable outcomes are produced by a real battle between equally-armed contestants; thus the adversary system requires, if it is to achieve these goals, some measure of equality in the litigants' capacities to produce their proofs and arguments.189 Without equipage equality, "the stronger case might not necessarily be the better case."190 When the resources and abilities of opposing parties are lopsided, the adversarial system will fail to produce accurate results. The wealthier, sophisticated, repeat-player litigants will usually win; the poorer, outgunned, one-shot litigants will lose, regardless of the merit of their cases.191 Indeed, critics cite this problem as one of the adversarial system's major flaws, and note that the other claimed benefits of adversarial presentation—the dignity and participation values, for example—are small compensation for the inevitable losses suffered by the weaker party.192 As one prominent critic of the adversarial system commented: "The simple truth is that very little in our adversary system is designed to match combatants of comparable prowess, even though adversarial prowess is a main factor affecting the outcome of litigation."193 By raising overlooked issues and legal authority, a judge can ameliorate the imbalances that undermine the adversarial system. For that very reason, judges have a tradition of assisting pro se litigants with case presentation. The same rationale that permits judges to depart from the party presentation rule in pro se cases should apply in cases in which one lawyer is clearly outgunned. This exception to the principle of party presentation should be viewed not as a deviation from adversary theory, but rather as a means of promoting adversarialism by ensuring that it works as best it can. The judge can make the adversary system more efficient at reaching just and accurate outcomes by helping to right the imbalance in opposing lawyers' skills and resources. Allowing judges to raise issues is not equivalent to transforming the judge into an advocate for one side or the other. An advocate finds facts and legal precedents that help only the one party he has been charged to represent, and then uses them to make arguments on that party's behalf. But judges need not go so far to correct an imbalance in the system. If a judge realizes that there is an important legal argument that has been overlooked, or valuable precedent that has gone uncited, the judge does not act as advocate if she points out the missing information and provides both parties with an opportunity to address the issues she has identified. If neither party chooses to do so, the court can obtain guidance from an amicus assigned to make the relevant arguments. In short, the line between judge and advocate can be firmly maintained even when a judge takes on a more active role in framing the case.

#### 3. The Court hasn’t ruled without litigation – prefer a consensus of empirical evidence.

Thomas ’10 (Jerry D; J.D. from the Chicago-Kent College of Law, Ph.D. in Political Science from the University of Kentucky, former Professor of Government at Eastern Kentucky University, Professor of Political Science at the University of Wisconsin Oshkosh; 2010; “Chapter 2: Law and Ideology in Judicial Decisionmaking”; Law and Ideology in the U.S. Courts of Appeals: Judicial Review of Federal Agency Decisions; pp. 19; accessed 4/3/18; TV)

Since the federal court system in the U.S. is an adversarial one, courts are limited to reviewing the real controversies that litigants bring before the courts. Courts are unable to review agency actions unless citizens or agencies themselves make an appeal to an appropriate reviewing court. While there are few real constraints on a federal court‘s ability to do so, there is little evidence that the Supreme Court strikes down agency actions sua sponte (of their own volition) without review being requested by litigants (Howard and Segal 2004).

### 2NC --- 2AC 3

#### Their interpretation of fiat’s anti-educational.

Michael W. Kearney 14, Doctoral student in Communication Studies and assistant debate coach, University of Kansas, “How Durable Is It? A Contextualized Interpretation Of Fiat In Policy Debate,” National Journal of Speech & Debate, 2(2), January 2014, http://site.theforensicsfiles.com/NJSD.2-2.Final.pdf

FIAT AD INFINITUM I believe these trends have emerged because the sophistication of fiat theory has stagnated. More often than not, when today's debaters encounter arguments that question the durability of their policies, the most common response is simply, “fiat is durable,” presumably representing an alternative understanding of fiat. This implicit interpretation of fiat, which I will refer to as fiat ad infinitum, suggests that fiat is infinite and unbounded by real world forces. In a sense, the utopian nature of this interpretation mirrors a conceptualization of debate as a form of social criticism wherein debaters emphasize the ideal world rather than the real world.2 In theory, this approach is not without merit. However, given contemporary debate’s emphasis on the real world, fiat ad infinitum seems both unnecessary and counterproductive as it departs too far from topic literature and the real world more generally. CONTEXTUALIZED FIAT As an alternative to fiat ad infinitum, I propose a contextualized understanding of fiat. This proposed interpretation would serve primarily as the justification for debating what “should” be done, but relevant forces would still influence the power and durability of any particular action. In other words, debates would still focus on hypothetically implemented policies, but they would no longer ignore many real world consequences. To better understand this interpretation, I will explain how a contextualized understanding of fiat might fluctuate depending on institutional, attitudinal, and temporal changes. Institutional changes refer to the relative abilities of acting agencies. In many debates, participants introduce evidence that advocates for particular actors, only to later retreat when opposing teams “fiat” a similar action by a different actor. This retreat often occurs because participants struggle to differentiate between the institutional limitations of policy actors. Since fiat ad infinitum treats every action as infinitely durable, debaters presume that decisions made by executive agencies possess the same staying power as decisions made by the President, the Congress, and the Supreme Court. A contextualized interpretation of fiat, on the other hand, would reward debaters who compare the inherent strengths and weakness of institutions. Attitudinal changes refer to the general mood surrounding policies. Though fiat sidesteps feasibility questions, attitudes can still influence policies after passage. Of course, any interpretation of fiat must assume that a policy has enough support to come into existence. However, debate would be ignoring a wealth of history and literature by pretending that every policy carries the same level of support. Here, the lines become less clear, but recent pieces of major legislation help provide some context for these attitudinal forces on policies. Shortly after the passage of Obama’s controversial health care legislation, the judiciary, potential presidential candidates, and an entire political party attempted to reverse the law.3 Conversely, the almost unanimously supported Patriot Act legislation has slowly given way to growing opposition.4 Under the fiat ad infinitum interpretation, these policies would be equally durable, and debaters would be denied the opportunity to make arguments regarding the attitudes that shaped real world policies. Temporal changes refer to the potential political, cultural, and economic influences on policies in the future. Political sea changes typically occur when a party gains or regains control over a governmental body. Changes in the executive branch, for example, often produce policy reversals. Since its inception, The Mexico City Gag Rule has been adopted or rescinded according to the political party of the President.5 Cultural changes have also influenced policies, though these changes generally occur slowly. Recently, cultural changes resulted in the reversals of the Don’t Ask Don’t Tell and Defense Of Marriage Act policies.6 Finally, economic changes regularly influence policies. In the case of financial regulations, The Glass-Steagall Act was adopted and repealed as the economy expanded and contracted.7 In sum, these changes over time provide the contexts that shape political institutions and policy decisions. Without a contextualized understanding of fiat, however, policy debate would continue to diverge from the political, cultural, and economic forces that create the real world. Debate challenges individuals to research, think critically, and communicate effectively about hypothetical actions. So long as debate continues to emphasize the real world, these skills will require debaters to understand the institutional, attitudinal, and temporal changes that influence real policies. Adopting a contextualized understanding of fiat will not simplify debate, but categorically dismissing real world consequences will certainly dumb it down.

### 2NC --- 2AC 4

#### [1] – Argumentation – court legitimacy is built upon citizen input which is shown in the court with the appeals process and the oral arguments – the court bypasses both of those phases which crushes legitimacy – that’s Milani and Smith

#### The plan decides the case in advance of the arguments presented from either side - crushes the rule of law

Colbert 6 (Douglas, Professor of Law – University of Maryland, “Coming Soon to a Court Near You - Convicting the Unrepresented at the Bail Stage: An Autopsy of a State High Court's Sua Sponte\* Rejection of Indigent Defendants' Right to Counsel”, Seton Hall Law Review, 36 Seton Hall L. Rev. 653, Lexis)

Even then, an activist court's readiness to decide a question not briefed or fully argued may subject the ruling to considerable skepticism and doubt. Understandably, litigants and the public are less  [\*696]  willing to accept a judicial holding that has ignored their viewpoint than one that invited them to share knowledge and perspective. [238](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678#n238) Additionally, the missing input and perspective from adversaries and affected parties makes a court more susceptible to deciding a case wrongly. [239](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678#n239) Circuit Court of Appeals Judge Richard Posner described the increased judicial risk as "taking a leap into the unknown." [240](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678#n240) Other commentators condemn a practice whereby an appellate court reaches decisions without hearing from the parties most affected, charging that it is "both illegal and imprudent for appellate courts to "play God.'" [241](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n241" \t "_self) These commentators urge courts to follow the adversarial process in an effort to reduce the possibility that reviewing judges will be uninformed and will reach decisions by relying on "assumptions that simply [are] incorrect and were not raised." [242](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n242" \t "_self) The Fenner court, for instance, seemed less troubled about  [\*697]  denying Fenner counsel or Miranda advisements because it "assumed" he had spoken before a sitting judge, in open court, where the public and impartial observers were present. [243](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n243" \t "_self) Had a knowing advocate challenged these wishful assumptions and explained that indigent defendants, like Fenner, remain in jail and "appear" through video broadcast only, the Court of Appeals might have been hard-pressed to overlook counsel's importance. [244](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n244" \t "_self) The force and legitimacy of criticism against appellate courts' activism is exemplified by Fenner, where the sua sponte holding deprived other similarly situated defendants of the same constitutional right to counsel without an opportunity to present argument. [245](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n245" \t "_self) At these moments, an appellate court must control any activist impulses to abandon the adversarial process and insist upon "a vigorous defense," as well as a "vigorous prosecution." [246](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n246" \t "_self) To do otherwise and rule without hearing from both sides, and without protecting the class of indigent defendants, jeopardizes that court's reputation and respect within the legal community. In 1993, Justice Souter recognized the institutional danger of an appellate court deciding a constitutional issue without ensuring equal adversarial participation when the Justice observed that a "constitutional rule announced sua sponte is entitled to less deference than one addressed on full briefing and  [\*698]  argument." [247](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n247" \t "_self) Justice Souter cautioned appellate courts to refrain from sua sponte decision-making because he feared that the legal community would give less import to a broad "rule of law unnecessary to the outcome of a case, especially one not put into play by the parties." [248](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n248" \t "_self) The Justice noted that courts that engage in this brand of judicial activism produce "the sort of "dicta ... which may be followed if sufficiently persuasive but which are not controlling.'" [249](http://www.lexis.com/research/retrieve?_m=7530df293f645bba1288ead44f7455d4&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAA&_md5=58c3c85fa9c839edfb125eeb0d6fb678" \l "n249" \t "_self)

#### [2] – Issue creation – Court legitimacy is dependent on its view as a legal body – the aff changes that by allowing the court to take up any issue that they want to irrespective of anything else

Epstein 98 (Lee, Professor of Political Science and Professor of Law – Washington University, The Choices Justices Make, p. 160-161)

This story suggests that a particular variant of the sua sponte doctrine, namely the practice of disfavoring the creation of issues not raised in the record before the Court, is a norm.1 We can speculate on why the major­ity of the Court was so taken aback by Goldberg's memo and why it took the action it did: because the memo deviated from a norm the justices had come to accept, they "sanctioned" Goldberg by rejecting his invitation to reconsider the constitutionality of capital punishment.'4¶ Framed this way. the norm disfavoring the creation of issues is as vital to the functioning of the Court as the institutions we have discussed here and in Chapter Four. If the norm of sua sponte did not exist, the justices would be free to raise any issue they wished in any case, even if the attorneys had not briefed the issue. The implications of such behavior are enormous. Justices would act a good deal more like members of Congress, who are free to engage in "issue creation," and less like jurists, who must wait for issues to come to them. We could imagine rational, policy-seeking justices attempting, as a matter of course, to append new issues to cases that had been accepted, briefed, and argued as a way to manipulate case outcomes, just as members of Congress add riders to legislative proposals.35¶ Additional implications of a Court operating free from a norm disfa­voring issue creation are easy to develop. 1 But the general point is simple: without this norm the Court would no longer resemble a legal body in the way that scholars, attorneys, and jurists—not to mention Article 111 of the U.S. Constitution—contemplate such fora. More to the point, regular deviations from this norm would undermine the Courts legitimacy. The public believes that the Court's legitimate judicial function involves resolv­ing the issues before it, not the creation of new issues.36 As one scholar put it, "When the parties choose issues, there is little opportunity for judges to pursue their own agendas and, as a consequence, the proceedings are not only fairer, but are perceived to be fairer," But, if the Court departs from this practice, it raises questions as to the impartiality of |its| actions, and such speculation tarnishes the Courts legitimacy. Litigant control of the issues is important to satisfy not only the parties, but society as well…When the Court [dis­covers] issues that the litigants have not presented, the Court erodes its credibility and trespasses on the soul of the [adversarial](http://adversari.il) system.'7

#### Issue creation undermines judicial legitimacy – eliminates perception of impartiality

Miller, 98 – JD, University of Chicago (Eric, “Should Courts Consider 18 USC § 3501 Sua Sponte?.” 65 U. Chi. L. Rev. 1029, Summer, lexis)

Third, it may be unseemly for a court actively to seek out its own issues to consider. n116 This is perhaps what then-Judge Scalia  [\*1051]  meant when he referred to "the premise of our adversarial system," thereby inviting comparison to other systems in which judges are much more active. n117 The legitimacy of the antimajoritarian power of judicial review, for example, depends in part on the fact that judges typically exercise the power only as it is necessary to decide disputes between litigants. This legitimacy could be eroded if judges were perceived as pursuing their own agendas by seeking out issues to consider. Viewed in this way, the refusal to make sua sponte consideration a routine practice is an important doctrine of judicial restraint.