# 1NC

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#### Businesses are for-profit entities

Wisconsin Supreme Court 94 (SHIRLEY S. ABRAHAMSON, J. Opinion in Sprangers v. Greatway Ins. Co., 514 N.W.2d 1, 182 Wis. 2d 521 (1994). Google scholar caselaw. Date accessed 7/20/21).

In Newell-Blais Post No. 443 v. Shelby Mutual Insurance, 487 N.E.2d. 1371 (Mass. 1986), the Massachusetts Supreme Judicial Court was called upon to determine the meaning of the policy exclusion "engaged in the business of ... selling ... alcoholic beverages." 534\*534 Without careful analysis, the court concluded that the term "business" should be given its ordinary and usual meaning which is, according to a dictionary, a "usually commercial or mercantile activity customarily engaged in as a means of livelihood." Thus, the court concluded, the common meaning of the word "business" necessarily includes a purpose of gain or profit. Because the post was a non-profit veterans organization, it could not be considered to be engaged in the business of selling or serving alcohol

#### Business practices are ongoing conduct defined by the behaviors of many market participants

MacIntosh 97 (KERRY LYNN MACINTOSH-Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University. “LIBERTY, TRADE, AND THE UNIFORM COMMERCIAL CODE: WHEN SHOULD DEFAULT RULES BE BASED ON BUSINESS PRACTICES?” *William and Mary Law Review*, vol. 38, no. 4, May 1997, p. 1465-1544. HeinOnline accessed online via KU libraries, date accessed 8/27/21)

These new and revised articles reflect a strong trend toward choosing default rules4 that codify existing business practices.5 [[BEGIN FOOTNOTE 5]] 5. In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. § 1-205(2). [[END FOOTNOTE 5]] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### They violate both terms —

#### 1 — The NCAA isn’t a business

Mawdaley 1 ( Melinda Mawdaley. “Are Iowa State's athletic cuts justified?” , Daily Iowan, - Iowa City, Iowa - Tuesday, April 3, 2001, <http://dailyiowan.lib.uiowa.edu/DI/2001/di2001-04-03.pdf> , date accessed 1/7/22)

The NCAA is not a business. It is an organization designed to enhance the college experience through competitive intercollegiate athletics.

#### 2 — amateurism is not ongoing conduct by many members — rather it is a single action, by one industry member

#### Vote negative for limits and ground — they can change any standard that has ever been used or could be used which leads to a new wave of standards affs that avoid core generics because they barely expand the scope of laws and don’t affect litigation. Infinite unpredictable affs make it try or die.

### 1NC — CP

#### The United States federal government should recognize full independence to Puerto Rico, American Samoa, and all other territories specified under the Territory Clause.

#### The National Collegiate Athletics Association should end all of its amateurism requirements.

#### Independence solves the Samoa advantage

**Gorrin-Peralta ’17** – (Carlos IvAn Gorrin Peralta, LL.M., Harvard University, J.D., University of Puerto Rico, A.B., College of the Holy Cross, Professor, Inter-American University of Puerto Rico Faculty of Law; “PAST, PRESENT, AND FUTURE OF U.S. TERRITORIES: EXPANSION, COLONIALISM, AND SELF-DETERMINATION”; Hein Online; D.A. November 3rd 2020, [Published 2017]; Stetson Law Review, Vol. 46; <https://heinonline.org/HOL/LandingPage?handle=hein.journals/stet46&div=17&id=&page=>)

What should be done? First, Congress should "dispose of' the territories as contemplated in the Territory Clause itself.1 42 Second, it should adopt legislation to comply with its international obligation to facilitate the process of selfdetermination of all the territories. Third, Congress must decide which substantive alternatives-that are both non-territorial and non-colonial-shall be compatible with the interests of the United States.

The options cannot include the territorial regime, which is the cause of the problems faced by the territories. One of the options could be admission of territories as new states. Congress must decide if it is willing to offer that option to any of the territories, under the terms and conditions employed in the past for the admission of thirty-seven new states.143 Another option could be a treaty of free association, similar to those already existing to regulate relations between the United States and several island communities of the Pacific.1 44 The third option, of course, is the recognition of full independence and the establishment of a new relation based on a treaty of friendship and cooperation. That was the route taken by the United States and the Philippines forty-eight years after acquisition of the islands in 1898.145 At least in the case of Puerto Rico, independence would open the way for economic development and productive relations with other nations including the United States, which would benefit much more from a free Puerto Rico than from a bankrupt colony.146

#### Second plank solves everything else and avoids deficits — it just has the NCAA end it without antitrust — the 1AC is 9 minutes of solvency advocates for this plank

### 1NC — K

#### The 1AC’s reification of the NCAA is an endorsement of a commodified system of sports

Simonovic 16, Serbian philosopher, (Ljubodrag, Sport as the religion of capitalism, An interview with Ljubodrag Simonoviç, author of The Philosophy of Olympism. Sport is central to his critique of capitalism., <https://libcom.org/library/sport-religion-capitalism>

Sport is an area in which the technicization of the environment, man and interpersonal relations attained the climax. It is one of the most important instruments of capitalism for destroying a humanistic and creating a” Technical civilization”. “Sportification” of the world is the most radical form of man’s denaturalization and decultivization and a means of his being involved in the life and spiritual orbit of “technical civilization”. Science strives to create a being (machine) which will be deprived of all those human qualities that hinder the breaking of records and the production of increasingly bloody sports spectacles. Sport draws on a mechanistic philosophy of the body and finds mimetic impulses in the industrial and militaristic movements. Instead of a natural movement and natural body, the prevailing movement is mechanistic, the body becomes the cage of technical rationality, while the “competitive character” becomes the embodiment of the ruling destructive spirit. Coaches become body technicians and slave drivers who are to enable the achievement of a desired result (record) at the cost of man’s destruction. At the same time, man’s spirit is also being crippled and the cult of a technicized body is being created and thus the cult of a “technical civilization”. This way of thinking absolutizes the quantitatively measurable result achieved at the cost of the destruction of man’s natural being. Sport creates a capitalist ideological sphere and the appropriate “public opinion” by destroying the emancipatory heritage of the civil society which offers an opportunity for man to get rid of the ecocide capitalist tyranny.

#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

Parakkal & Bartz-Marvez 13, Raju Parakkal: Assistant Professor of International Relations, Philadelphia University. Sherry Bartz-Marvez: Visiting Assistant Professor, Department of Economics, University of Miami (Capitalism, democratic capitalism, and the pursuit of antitrust laws, *The Antitrust Bulletin*, Vol. 58, No. 4, Winter 2013, DOI: 10.1177/0003603X1305800409)

Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

Taking a global perspective, the idea that antitrust laws serve as a legislative bulwark against anticompetitive practices is not exclusive to the regulatory environment of the United States. Many other countries have adopted antitrust laws for the same goal, among others. And for the many developing and transition countries that adopted antitrust laws in recent decades, these laws are viewed as tools to promote economic development as well.

The view that antitrust laws are required to protect and promote competition has, however, been seriously contested, especially since the publication in 1978 of The Antitrust Paradox: A Policy at War with Itself by law professor and federal appellate court judge Robert Bork. 7 The subtitle to Bork’s highly influential book sums up the critique commonly leveled against antitrust laws: “[C]ertain of its doctrines preserve competition, while others suppress it, resulting in a policy at war with itself.”8 The fundamental problem stems largely from the difficulty in deciding which values should be ultimately promoted through the application of antitrust laws—consumer welfare or business efficiency? If the answer is both, then how much emphasis should be placed on each? Even if the goals are unambiguously certain and universally agreed upon, the question still remains as to what body of knowledge the courts can use consistently to adjudicate antitrust cases. 9

#### The affirmative’s constant push for competitiveness is simply a smokescreen and band-aid for capitalism’s constant and never-ending crisis

Bieler 18 — Andreas Bieler (Professor of Political Economy, University of Nottingham); “Agency and the Power Resources Approach: Asserting the Importance of the Structuring Conditions of the Capitalist Social Relations of Production;” Global Labour Journal, 2018, Vol. 9, No. 2, pg. 245-246 \*\*edited for gendered language, brackets denote change

The Agency of Resistance and the Structuring Conditions of Capitalism

We cannot conceptualise agency and its strategies of resistance without due regard to the structuring conditions of the social relations of production. As Karl Marx famously said,

~~Men~~ [People] [sic] make their own history, but they do not make it as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brains of the living (Marx, 1852/1984: 10).

In his critical engagement with the PRA, and here especially the ambiguous role of institutional power resources, Alexander Gallas has already attempted to combine a focus on agency with an emphasis on the structural setting. In his reflections on a strategic-relational model of class power, he argues that power resources depend on the strategic environment and the strategies adopted. “What is needed”, he argues, “is a conjunctural analysis of strategies and relations for forces. ‘Conjuncture’ here refers to a concrete constellation of strategies and relation of forces at a given time in a given space…” (Gallas, 2016: 305). Nevertheless, while he does incorporate a focus on the “relations of forces” between trade unions and employers’ associations as well as on the wider institutional setting underpinning labour relations and particular forms of state including political parties and government composition, he still overlooks the more fundamental structuring conditions of the capitalist social relations of production, resulting from the way in which production is set up.

Because of the way capitalist production is organised around wage labour and the private ownership of the means of production, three structuring conditions can be identified. First, it is not only workers who compete with each other for employment, but equally companies are in constant competition with each other over market share. Hence, there is an emphasis on competitiveness and the related pressure for further technological innovation in a relentless struggle for ever higher profit levels. As Marx (1867/1990: 381) noted, “under free competition, the immanent laws of capitalist production confront the individual capitalist as a coercive force external to him”. Nevertheless, what is logical for the individual capitalist is problematic for capital as a whole. When every capitalist attempts to produce more goods with fewer workers through the application of new technology, there will be fewer and fewer people who can actually buy those goods. Thus, there is a situation of a surplus of both capital and labour, which can no longer be brought together in a productive way within the capitalist social relations of production – a “state of overaccumulation” (Harvey, 1985: 132). It is this crisis tendency of capitalism which can be identified as the second structuring condition of capitalism. Finally, in order to overcome crisis, there is a structuring condition of constant outward expansion by capitalism, either in order to capture new markets or cheaper labour abroad or to re-commodify areas which had been moved outside the capitalist market, such as health services in many industrialised countries (Bieler and Morton, 2018: 38–41).

#### That culminates in extinction from climate change, nuclear war, extreme inequality, and perpetual exploitation of the Global South

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is a global socialist movement that includes a rejection of both amateur and professional sports

Moghadam 20, Professor of Sociology and International Affairs at Northeastern University, and former Director of the International Affairs Program (Valentine, April, Planetize the Movement! *Great Transition Initiative*, https://greattransition.org/images/Planetize-Movement-Moghadam.pdf)

The moment is ripe for an alternative. Labor unrest has grown around the world, encompassing industrial workers, teachers, health workers, janitors, and others across the Middle East and North Africa, in Latin America, and even in the US. Indeed, we may be nearing a classic Leninist “revolutionary situation,” which could be the culmination of “the world revolution of 20xx.”4 If so, the Global Left should be better prepared to meet the challenge.

The good news is that there is a “new Global Left” that enjoys a multitude of emerging movements, including climate justice groups led by young people.5 The rich array of activist groups and the dynamism and passion they display excite a sense of possibility. However, the very diversity of movements and their weak interconnection could constrain the Global Left’s ability to achieve meaningful change.6 Without consensus around a common agenda, how are we to make the great transition from an entrenched global system based on capitalist profit, top-down decisionmaking, war, and environmental degradation to a world where people and the planet take center stage in politics and policy? Surely we need not only resistance on a multiplicity of grounds, but also agreement on a clear, coherent, and feasible alternative to the unjust, undemocratic, and unsustainable status quo.

A Missing Global Actor The socialist and communist movements and parties of the nineteenth and twentieth centuries pinned their hopes on the capacity of a united working class, defined as a largely male industrial laboring class (“the proletariat”), to tame and challenge capitalism. In the latter part of the twentieth century and into the twenty-first, the nature of that class changed, now encompassing a broader spectrum of working people, such as those in public and private services (including care workers) who labor under the supervision of highly paid managers and administrators, along with the precariat and gig economy workers. On the Left, however, many do not regard that more inclusive working class as a central actor, despite its composition spanning race, ethnicity, religion, national origin, and gender.7 Instead, today’s movements—certainly in the US—seem to define actors based on particular identities and interests. Rather than the singular actor of yore (the working class), today there is a multiplicity of actors across numerous movements. The question arises as to whether such a multiplicity of actors can generate the necessary coordination and craft a strategy to challenge the powers-that-be—economic and political elites situated in national governments; in the financial, corporate, and military sectors; and in institutions of global governance. If those elites are so well connected, why is it so difficult for our numerous movements to coalesce around a shared identity and agenda? In my estimation, the Left has lost sight of the proverbial forest for the proverbial trees. It has gotten far too caught up in culture wars and battles over identity, forgetting the centrality of political economy to the hidden injuries not only of class, but also of race and ethnicity, women’s subordination, the destruction of the commons, and inter- and intra-state rivalries, violence, and war. This strategic shift away from political economy has removed the Left’s traditional constituency—the working class in all its breadth and diversity—from a meaningful role. The shift also has confused the Left’s priorities. For instance, we cannot truly address the problems of racism and discrimination without giving urgent attention to the systemic problems of class: low-income communities devastated by precarious employment, the loss of public investment, dirty air and water, poor-quality schooling, and bad health. The politics of class cannot be divorced from those of race and of sex, because class is imbued with race and sex, and race and sex are themselves imbued with class. Under patriarchal and racist capitalism, there is no class exploitation without racial and sexual oppression. The separation of the three intersecting dimensions across unconnected movements—often lacking in understanding of and solidarity with each other—is among the unfortunate outcomes of our times, caused to some degree by partial, segmented internal politics, but largely by the relentless and effective political, cultural, and ideological campaigns of the ruling elites.

Catalytic Action Now

In the wake of the global financial crisis, it became clear that the world needed a new economic system. Change did not come about, however. To offer a viable alternative to financialization and runaway “shareholderism,” movements need to stand for workplace democracy and shared management, and for long-term rational and people-oriented planning over short-term profit. Although breaking up huge corporations should be the goal, taxing them adequately and using the revenue for societal needs and rights, not for continued militarism, can steer society in the right direction in the interim.

At the same time, we also need to think bigger. Contrary to the conventional wisdom that socialist and communist experiments all ended in failure, I believe that there is a lot we can learn from them. Indeed, this “failure literature” lacks balance and historical accuracy. The great socialist, communist, and liberation movements of the past may not have accomplished all that they could have or intended to, but they were very effective providing education and culture for the poor and imparting the legacy of equality, economic justice, and women’s advancement. The Communist movement had its shortcomings, but it promoted women’s equality and racial equality, supported numerous liberation movements, and checked capitalist and imperialist expansion.

In contrast, our recent movements have failed even in the short run. They may have changed the subject—certainly OWS highlighted the problem of income inequalities and helped reintroduce capitalism and its flaws into the national conversation in the US—but they could not compel change of the system itself, much less dislodge its major actors and beneficiaries. Unlike the progressive movements of the late nineteenth century and much of the twentieth century that gave us socialism and social democracy, an end to British colonialism, Third World development, and the demise of authoritarianism in southern Europe, the movements of the twenty-first century have not been able to make headway in structural or systemic terms. Instead, the collapse of world communism—celebrated across the globe—actually generated new crises and chaos.

One response to the crisis has been the new municipalism, which aims to implement localized democratic practices and people-oriented resource allocation. In one promising example, the administration of the Communist mayor of Santiago, Chile, has created a “people’s pharmacy,” offered cheap eye-care and glasses, increased public housing, and embraced leftist approaches to community safety, among other progressive people-oriented initiatives.8 But localism is not enough, as many of our problems are global in nature. The recklessness of the financial sector has had ripple effects across borders; the obsession with economic growth and capital accumulation has generated a massive, global environmental crisis. That brilliant experiment in radical democratic feminist municipalism—Rojava in northern Syria—was overturned in October 2019 by a brutal Turkish invasion facilitated by the Trump administration. Thus, we must heed Dr. King’s message to “take the nonviolent movement international” and to planetize it.

The Global Left and its infrastructure remain fragmented and disconnected, except for periodic mass rallies against the most egregious actions of global capitalism and imperial states. But it wasn’t always so. Once, vibrant Internationals were organized to guide and promote a worldwide movement. The influential First International, initially called the International Workingmen’s Association, was formed in 1864, but contention between the anarchist and socialist wings led to its demise in the late 1870s. Its successor, the Second International, had great success, but fractured in the run-up to World War I. The Third International formed after the Russian revolution to unite socialist and communist groups from across Europe and Asia, but later, under Stalin, became corrupted into the highly centralized Comintern.9

Both the successes and the failures of these Internationals offer vital lessons: a powerful worldwide movement could be premised on both a global political organization with a strategy for change and the strength of plural and diverse movements that call the status quo into question. To move forward, we need to look back at the old Internationals and, at the same time, not give up on the World Social Forum. The crises and injustices of our times call for both a coordinated “united front” and a loosely aligned “popular front.”

Some say the language of the past—socialism, communism, planning—is outmoded and unlikely to resonate. And yet, many young people embrace the term socialism; in the US, they rallied around Bernie Sanders’s call for “democratic socialism,” and in the UK, they coalesced around the Labour Party’s left-wing faction, Momentum, and its leader, Jeremy Corbyn. In Tunisia, where young people are losing hope in capitalist democracy because of high unemployment and other economic difficulties, the left-wing student union UGET and the many young supporters of the Front Populaire call for planning and a strong welfare state. Around the world, women have come together around a more inclusive, transformative vision of feminism, which some call “feminism for the 99%.”10 The “left nationalism” of Scotland, Northern Ireland, and the Kurds is also part of the new Global Left and could help constitute a global movement against capitalism, militarism, and oligarchic states.

The world’s injustices as well as new possibilities for alliance have inspired calls for coordinated forms of organizing. The late Egyptian Marxist economist Samir Amin, for instance, called for a Fifth International.11 But to balance the complementary needs of global coordination and plural autonomy, two Internationals may be needed, one that remains horizontally based—the movement of movements—and the other vertically organized, drawing inspiration and lessons from the old Internationals.

What might this mean in practical, strategic terms? To start, we should revitalize the World Social Forum.12 It encompasses diverse grievances, identities, and interests; it remains the site for dialogic discussion and the cultivation of solidarity across movements; and it has resisted the authoritarian impulses and practices of capital and the state. It can remain an open space for dialogue among place-based and identity-expressive movements. Building up the Global Left and helping advance a Great Transition, however, requires a global political organization to do the necessary crossmovement “translation” work and deliver a plan for structural change at national, regional, and global levels. Accomplishing this will be an arduous task, but we can’t afford to wait.

Whether it is called the Fifth International, the United Front, the Progressive International, or the World Party, such an organization would be vertically organized, along the lines of the earlier Internationals but with the involvement of anti-imperialist feminist groups such as Code Pink, the Women’s International League for Peace and Freedom, Marche Mondiale des Femmes, and the new Feminist Foreign Policy Project. This planetized formation would encompass progressive parties, anti-neoliberal unions, and anti-war movements across the globe. It would practice democratic decision-making and offer a clear vision and mission of an alternative system of production, social reproduction, trade, and international relations. It would revive the 2011 Arab Spring call, “The people want the fall of the regime,” and create a powerful message demanding a re-enactment of what occurred in 1989/1990, but in reverse: “The people want the fall of the ruling capitalist elites.”

Such a plan calls for a renewed emphasis on the working class, expansively defined and represented. Unions could organize the unorganized, carry out the necessary political education work among their members, and create broad coalitions with progressive political parties and unions across borders.13 It is worth noting that unions of teachers and nurses have been taking to the streets and making demands in Morocco, Iran, Iraq, Tunisia, Chile, and France, as well as in the US. Such parallel developments are ripe for cross-fertilization and coordination.

We should take the best from the past—planning, coordinating, internationalism, and action— and move forward with a common agenda for systemic transformation. To move forward with an International, veterans of past, more centralized movements and organizations might take the lead in organizing an initial meeting, to convene in a country that has felt the devastating effects of neoliberalism, such as Argentina or Greece. Another venue could be Tunisia—now the only genuinely democratic country in the Middle East/North Africa region. Our movements need to coalesce to make the present moment of populism and hegemonic decline an advantageous one for a Great Transition—this time toward a global socialist-feminist democracy built through the synergy of a new International and a revitalized WSF.

### 1NC — DA

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### The plan revives antitrust across the board and leads to expanded enforcement in the context of labor.

Posner 21, professor at the University of Chicago Law School, is author of "How Antitrust Failed Workers." (Eric, “The Supreme Court’s NCAA ruling has huge implications outside of sports,” *Washington Post*, June 22, <https://www.washingtonpost.com/outlook/2021/06/22/ncaa-supreme-court-wage-suppression-monopoly/>)

The Supreme Court on Monday ruled unanimously against the National Collegiate Athletic Association in a closely watched antitrust dispute involving the compensation of student-athletes. The court held that the NCAA violated antitrust laws by conspiring to suppress some “education-related” benefits — such as scholarships for graduate degrees, the cost of tutoring and free computers — that schools might distribute to students. (Many recruited athletes already have their tuition waived and are given room and board and a few perks, and the schools wanted to draw the line there.) The significance of the ruling goes far beyond the unique setting of college sports. The decision hints at a revival of antitrust law and its application to an area of the economy antitrust law has unjustly neglected — the labor market. When employers agree among themselves to limit the wages they pay workers, that is a price-fixing (or technically, wage-fixing) conspiracy. Such an agreement enriches employers at the expense of workers who are paid below the market wage. When wages are suppressed, fewer people take jobs, resulting in lower economic output and thus higher prices for consumers. The employers profit at everyone’s expense. Such agreements are supposed to be illegal under the antitrust laws. Yet beneath the fog of folklore, myth and public relations, the NCAA is little more than a device that universities have used for decades to fix the wages of the athletes who are hired to play sports before enormous audiences (at least in the case of Division I football and basketball). In a narrow ruling, the court affirmed a trial court’s decision that held that universities cannot agree through the NCAA to restrict competition on education-related benefits. On the question of whether the NCAA can pay compensation above the cost of education (that is to say, full-blown wages or salaries), the court did not express an opinion, because the plaintiffs did not raise this issue on appeal. But as Justice Brett M. Kavanaugh pointed out in his concurring opinion, the restriction on compensation above the cost of attendance is almost certainly illegal as well. The trial court had held otherwise, based on the NCAA’s claim that college sports would be destroyed if athletes were paid wages beyond educational expenses. But as Kavanaugh also noted, the NCAA’s theory of amateurism, which the court had swallowed hook, line and sinker in a case involving the organization in 1984, is baloney. The Supreme Court’s NCAA ruling will turn sports upside down. Here’s how. The NCAA’s amateurism justification boils down to the claim that fans will pay more to watch college sports if the athletes aren’t paid. That is, fans will value the product (athletic contests like football and basketball) more if they can think of the players as student athletes rather than pros. The trial court found little evidence for this claim, which is self-serving to say the least. But even if it were true, the law doesn’t allow firms to cartelize labor markets to please consumers. If the public prefers to eat at restaurants where servers are paid nothing but tips, restaurants aren’t allowed to agree with one another to pay servers nothing. Nor may firms cartelize markets in goods and services so that they can pay their workers high wages. The antitrust laws are based on a firm commitment to free markets. In short, the NCAA cartel, hiding in plain sight for years, has finally been exposed. The logic of the decision applies to other areas of the economy. In recent years, a consensus has emerged that as a consequence of lax antitrust enforcement going back decades, markets have become less competitive, resulting in higher prices and lagging economic growth. To remedy these problems, the Biden administration has made antitrust enforcement a priority, as have Democrats in Congress, including Sen. Amy Klobuchar (D-Minn.), who has proposed a bill that would revive muscular antitrust enforcement. So far, the Supreme Court has been skeptical about antitrust efforts, but the unanimous decision in the NCAA case may show that the court is coming around. Antitrust law has almost never been used to protect workers from employers who cartelize labor markets — who suppress wages through agreement, agree not to hire each other’s workers, and so on. (This decision is the first decisive victory for employees in an antitrust case before the Supreme Court in almost a century.) Lawyers and economists assumed that labor markets were competitive and that employers rarely try to cartelize them. This view began to change about a decade ago after a scandal involving allegations of an agreement among Silicon Valley tech companies, including Apple and Google, not to recruit each other’s employees. The tech companies settled a class-action suit, paying about $415 million to help make up for lost raises, but insisted they had broken no laws. Since then, the U.S. government has repeatedly expressed concern about labor market antitrust violations. In just the last year, the Justice Department announced its first three criminal indictments of employers for violating the antitrust laws by agreeing not to compete for employees. Much of this change in attitude is due to the work of economists who have discovered many labor markets are highly concentrated — meaning only a few employers compete for workers. As a result, wages are suppressed below the competitive level. It appears many mergers have further concentrated labor markets, resulting in lower wages. Highly concentrated markets along with a demonstrated willingness among employers to enter agreements to suppress wages indicate there is an antitrust problem that urgently needs attention. With its ruling against the NCAA, the Supreme Court has given a boost to efforts to marshal the antitrust laws on behalf of workers. The decision may be overdue. But it hints that as others in government and the private sector work to wake antitrust law from its Rip Van Winkle sleep, the court won’t stand in the way.

#### Unplanned expanded enforcement drains finite resources from existing priorities

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Health consolidation collapses public health---specifically rural care

Numerof 20, PhD @ Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, <https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0>)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Rural care is key to US ag exports

Lichtenwald 16, CEO of Medsphere Systems Corporation (Irv, “Is CMS Efforts Enough to Transform Rural Healthcare?,” <http://hitconsultant.net/2016/02/22/32016/>)

The scenario is far from unrealistic. For the most part, non-urban healthcare organizations are not doing well. In fact, almost every rural hospital in the country is operating near the margin or in the red. According to iVantage Health Analytics Senior Vice President Michal Topchik, speaking to Health Data Management, 67 rural hospitals have closed since 2010, and 283 were vulnerable to closure last year. Already in 2016 iVantage has identified 673 vulnerable rural hospitals, with 210 at very high risk. While only about 15 percent of the American population, roughly 46 million people, live in rural areas, they do some of the nation’s most essential work. Mostly, they grow food, produce energy or provide services to the people that grow food and produce energy. Obviously, the rural healthcare situation matters in terms of food and energy security at home, but also in terms of economics—the United States is by far the largest global exporter of food, with roughly $40 billion separating America from number two, and is on the cusp of ending energy imports for the first time since 1950. In reality, rural healthcare is transitioning, not disappearing, mostly because doing nothing is just bad economics. People in rural areas need care. If they can’t get it locally, they have to be flown to the nearest facility, which ends up being more expensive over the long term than funding a local hospital. To their credit, the Centers for Medicare and Medicaid Services (CMS) are already aware of the situation in rural America and have been taking steps toward fixing it. Speaking recently to the National Rural Health Association, CMS Acting Administrator Andy Slavitt explained that the agency is “establishing a CMS Rural Health Council to work across the entire agency to oversee our work in three strategic priority areas– first, improving access to care to all Americans in rural settings; second, supporting the unique economics of providing health care in rural America; and third making sure the health care innovation agenda appropriately fits rural health care markets.” As Slavitt points out, rural Americans tend to be older, earn less money and they generally lack health insurance—more than 60 percent of citizens without health insurance live in rural areas in states that have not expanded Medicaid through the Affordable Care Act. Nearly 75 percent of government health insurance exchange users make less than 250 percent of the federal poverty level—currently a bit less than $12,000 a year for an individual and slightly more than $24,000 for a family of four. So, if the argument could be made that rural America is home to the greatest number of healthcare challenges, then it also represents the greatest opportunity. If we can make affordable healthcare work outside urban areas, we may have a template applicable to other scenarios. On Slavitt’s first two points—access and economics—CMS is working to sign rural Americans up for health insurance and adjusting requirements and payment models for rural care. Which brings us to the “innovation agenda,” Slavitt’s term for the digitization of healthcare and the all-in bet the federal government has made on the benefits of health IT. The goal here is to transform rural hospitals and clinics into efficient, wired, lean operations that can absorb the realities of rural care and still operate in the black. With 35 percent of rural hospitals losing money and almost two-thirds running a negative operating margin, there’s simply no way rural facilities can invest in health IT without help. From CMS, that help takes the form of several planned or in-process programs: – Medicaid State Innovation Model grants for technical support in smaller rural hospitals – Aggregation of services in rural communities creating benefits from population health – The Frontier Community Health Integration Project (summer 2016), developing and testing new models in isolated areas using telemedicine and integration approaches – The ACO investment model for hospitals that can’t invest in ACO infrastructure; the model now serves 350,000 rural beneficiaries through 1,100 rural providers – Incorporating telemedicine where appropriate; CMS is publishing a Medicaid final rule that for the first time allows for face-to-face encounters using telehealth It’s clear that CMS understands we can’t leave rural hospitals to fend for themselves. But it also seems clear that a lot of hospitals invested in electronic health records (EHRs) they could ill afford to qualify for Meaningful Use funds—dollars that seldom covered implementation costs for solutions that didn’t yield significant cost savings and required additional technical personnel. By and large, that MU money has been dispensed. The carrot has been eaten. What Medicare- and Medicaid-heavy hospitals can expect next is two sticks: more stringent reporting requirements necessitating EHR use and direct penalties (for now) related to Meaningful Use non-compliance. “The high capital and operating costs associated with health IT, specifically EHRs, have put some hospitals in a difficult position,” wrote Becker’s Hospital CFO in a prescient January 2014 article. “Do they absorb the financial hit now, even if they know they can’t afford it? Most organizations are doing so …” Yes, CMS is trying to help lessen the impact of that metaphorical beating, but these rural hospitals also have to make decisions to help themselves. Too many are paying for systems they can’t afford to maintain. Moreover, they are unable to invest in necessary security, leaving them increasingly open to data breaches. Many are also still handicapped by the costs of ICD-10 transition, for which there was no federal reimbursement. Rural hospitals need a comprehensive EHR platform that integrates with a revenue cycle system so they can properly capture charges and manage the billing process, and effectively collect on previously lost billing. These systems need to be available as a subscription service so that rural hospitals don’t have to come up with huge money down. And they can’t require the hiring of an additional 50 application specialists to make the new systems work. “The benefits of IT are still to come,” Standard and Poor’s Marin Arrick told Becker’s Hospital CFO more than two years ago. Still the economic crisis in rural care rages on, certainly lessening access to care for millions of Americans and arguably impacting the labor force that produces food, energy, etc.

#### US ag exports prevent hotspot escalation

Castellaw 17

Lieutenant General John Castellaw is the Founder and CEO of Farmspace Systems LLC, a provider of precision agricultural aerial services and equipment. He is a highly decorated 36-year veteran of the United States Marine Corp where he participated in and led several humanitarian operations in Africa, Asia and Europe. He is also the former President of the non-profit Crockett Policy Institute where he created the “SOLDIER 2 CIVILIAN” program to help veterans find jobs in precession agriculture. He graduated from the University of Tennessee, Martin (UTM) with a degree in Agriculture. He currently operates his family farm in Tennessee. “Opinion: Food Security Strategy Is Essential to Our National Security.” Agri-Pulse. May 1st, 2017. https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security

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

## 1NC — Inherency

### 1NC — *Alston v. NCAA*

#### *Alston v. NCAA* solves — vote negative on presumption

Dodd ’21, CBS Sports Senior Writer (Dennis, “Supreme Court cracks NCAA’s amateurism with unanimous decision allowing unlimited benefits tied to education”, CBS Sports, June 21st, 2021, <https://www.cbssports.com/college-football/news/alabama-vs-georgia-early-picks-predictions-odds-for-college-football-playoff-national-championship-game/>)

[TITLE]: Supreme Court cracks NCAA’s amateurism with unanimous decision allowing unlimited benefits tied to education

The U.S. Supreme Court on Monday unanimously ruled in favor of college athletes seeking unlimited benefits tied to education in a landmark case that enhances players' ability to earn compensation while simultaneously diminishing the NCAA's power. The Supreme Court ruled that the NCAA could not limit such benefits for athletes who play Division I basketball or football.

"The NCAA and its member colleges maintain important traditions that have become part of the fabric of America ... but those traditions alone cannot justify the NCAA's decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated," wrote Justice Brett Kavanaugh in his concurring opinion. "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different.

"The NCAA is not above the law."

The Supreme Court ruled 9-0 in favor of the appellees in Alston v. NCAA, who previously won a Northern District of California Circuit Court decision. The loss is the biggest legal defeat for the NCAA since the NCAA v. Board of Regents case in 1984 that allowed schools to monetize the rights to televised football games.

The suit in NCAA v. Alston was brought by a group of athletes led by former West Virginia running back Shawne Alston who contended the NCAA had violated antitrust laws by capping the amount of compensation they could receive as part of their scholarships. Currently, scholarships only include tuition, room, board and cost of attendance.

The NCAA attempted to take the ruling on the chin, noting in a statement that it believes it still has some power to regulate educational benefits.

While today's decision preserves the lower court ruling, it also reaffirms the NCAA's authority to adopt reasonable rules and repeatedly notes that the NCAA remains free to articulate what are and are not truly educational benefits, consistent with the NCAA's mission to support student-athletes.

While this case does not create an avenue for schools to pay athletes directly, it does lead to the opportunity for schools to provide nearly anything they want to athletes so long as they can tie the items to the educational experience.

Most notably, schools can now offer internships, postgraduate scholarships and the like to lure athletes to campus. They will also be able to offer electronic equipment, such as computers. The lengths to which these benefits can be applied have not yet been worked out. For example, is there a scenario in which a car could be given to an athlete who lives a certain distance from campus or has a class in a certain area of town? The lower court has indicated the benefits would be limited.

The Supreme Court's decision enhances the chances of athletes being able to get vast sums of benefits in the future with the NCAA still finalizing name, image and likeness rules while awaiting a potential Congressional bill.

## 1NC — Stolen Wealth Adv

### 1NC — Framing

#### Existential risks outweigh

Ord 20. Toby Ord, Senior Research Fellow in Philosophy at Oxford University & world-renowned risk-assessment expert who’s advised the World Health Organization, the World Bank, the World Economic Forum, the US National Intelligence Council and the UK Prime Minister’s Office. (3-3-2020, “The Precipice: Existential Risk and the Future of Humanity,” Hachette Book Group & Bloomsbury Publishing, <https://www.google.com/books/edition/The_Precipice/3aSiDwAAQBAJ?hl=en&gbpv=0>, Google Books)//pacc + AM \*bracketed for clarity\*

UNDERSTANDING EXISTENTIAL RISK

Humanity’s future is ripe with possibility. We have achieved a rich understanding of the world we inhabit and a level of health and prosperity of which our ancestors could only dream. We have begun to explore the other worlds in the heavens above us, and to create virtual worlds completely beyond our ancestors’ comprehension. We know of almost no limits to what we might ultimately achieve. Human extinction would foreclose our future. It would destroy our potential. It would eliminate all possibilities but one: a world ~~bereft~~ [lacking] of human flourishing. Extinction would bring about this failed world and lock it in forever — there would be no coming back. The philosopher Nick Bostrom showed that extinction is not the only way this could happen: there are other catastrophic outcomes in which we lose not just the present, but all our potential for the future. Consider a world in ruins: an immense catastrophe has triggered a global collapse of civilization, reducing humanity to a pre-agricultural state. During this catastrophe, the Earth’s environment was damaged so severely that it has become impossible for the survivors to ever reestablish civilization. Even if such a catastrophe did not cause our extinction, it would have a similar effect on our future. The vast realm of futures currently open to us would have collapsed to a narrow range of meager options. We would have a failed world with no way back. Or consider a world in chains: in a future reminiscent of George Orwell’s Nineteen Eighty-Four, the entire world has become locked under the rule of an oppressive totalitarian regime, determined to perpetuate itself. Through powerful, technologically enabled indoctrination, surveillance and enforcement, it has become impossible for even a handful of dissidents to find each other, let alone stage an uprising. With everyone on Earth living under such rule, the regime is stable from threats, internal and external. If such a regime could be maintained indefinitely, then descent into this totalitarian future would also have much in common with extinction: just a narrow range of terrible futures remaining, and no way out. [FIGURE 2.1 Omitted] Following Bostrom, I shall call these “existential catastrophes,” defining them as follows: 3 An existential catastrophe is the destruction of humanity’s longterm potential. An existential risk is a risk that threatens the destruction of humanity’s longterm potential. These definitions capture the idea that the outcome of an existential catastrophe is both dismal and irrevocable. We will not just fail to fulfill our potential, but this very potential itself will be permanently lost. While I want to keep the official definitions succinct, there are several areas that warrant clarification. First, I am understanding humanity’s longterm potential in terms of the set of all possible futures that remain open to us. 4 This is an expansive idea of possibility, including everything that humanity could eventually achieve, even if we have yet to invent the means of achieving it. 5 But it follows that while our choices can lock things in, closing off possibilities, they can’t open up new ones. So any reduction in humanity’s potential should be understood as permanent. The challenge of our time is to preserve our vast potential, and to protect it against the risk of future destruction. The ultimate purpose is to allow our descendants to fulfill our potential, realizing one of the best possible futures open to us. While it may seem abstract at this scale, this is really a familiar idea that we encounter every day. Consider a child with high longterm potential: with futures open to her in which she leads a great life. It is important that her potential is preserved: that her best futures aren’t cut off due to accident, trauma or lack of education. It is important that her potential is protected: that we build in safeguards to make such a loss of potential extremely unlikely. And it is important that she ultimately fulfills her potential: that she ends up taking one of the best paths open to her. So too for humanity. Existential risks threaten the destruction of humanity’s potential. This includes cases where this destruction is complete (such as extinction) and where it is nearly complete, such as a permanent collapse of civilization in which the possibility for some very minor types of flourishing remain, or where there remains some remote chance of recovery. 6 I leave the thresholds vague, but it should be understood that in any existential catastrophe the greater part of our potential is gone and very little remains. Second, my focus on humanity in the definitions is not supposed to exclude considerations of the value of the environment, other animals, successors to Homo sapiens, or creatures elsewhere in the cosmos. It is not that I think only humans count. Instead, it is that humans are the only beings we know of that are responsive to moral reasons and moral argument — the beings who can examine the world and decide to do what is best. If we fail, that upward force, that capacity to push toward what is best or what is just, will vanish from the world. Our potential is a matter of what humanity can achieve through the combined actions of each and every human. The value of our actions will stem in part from what we do to and for humans, but it will depend on the effects of our actions on non-humans too. If we somehow give rise to new kinds of moral agents in the future, the term “humanity” in my definition should be taken to include them. My focus on humanity prevents threats to a single country or culture from counting as existential risks. There is a similar term that gets used this way — when people say that something is “an existential threat to this country.” Setting aside the fact that these claims are usually hyperbole, they are expressing a similar idea: that something threatens to permanently destroy the longterm potential of a country or culture. Third, any notion of risk must involve some kind of probability. What kind is involved in existential risk? Understanding the probability in terms of objective long-run frequencies won’t work, as the existential catastrophes we are concerned with can only ever happen once, and will always be unprecedented until the moment it is too late. We can’t say the probability of an existential catastrophe is precisely zero just because it hasn’t happened yet. Situations like these require an evidential sense of probability, which describes the appropriate degree of belief we should have on the basis of the available information. This is the familiar type of probability used in courtrooms, banks and betting shops. When I speak of the probability of an existential catastrophe, I will mean the credence humanity should have that it will occur, in light of our best evidence.9 There are many utterly terrible outcomes that do not count as existential catastrophes. One way this could happen is if there were no single precipitous event, but a multitude of smaller failures. This is because I take on the usual sense of catastrophe as a single, decisive event, rather than any combination of events that is bad in sum. If we were to squander our future simply by continually treating each other badly, or by never getting around to doing anything great, this could be just as bad an outcome but wouldn’t have come about via a catastrophe. Alternatively, there might be a single catastrophe, but one that leaves open some way for humanity to eventually recover. From our own vantage, looking out to the next few generations, this may appear equally bleak. But a thousand years hence it may be considered just one of several dark episodes in the human story. A true existential catastrophe must by its very nature be the decisive moment of human history — the point where we failed. Even catastrophes large enough to bring about the global collapse of civilization may fall short of being existential catastrophes. While colloquially referred to as “the end of the world,” a global collapse of civilization need not be the end of the human story. It has the required severity, but may not be permanent or irrevocable. In this book, I shall use the term civilization collapse quite literally, to refer to an outcome where humanity across the globe loses civilization (at least temporarily), being reduced to a pre-agricultural way of life. The term is often used loosely to refer merely to a massive breakdown of order, the loss of modern technology, or an end to our culture. But I am talking about a world without writing, cities, law, or any of the other trappings of civilization. This would be a very severe disaster and extremely hard to trigger. For all the historical pressures on civilizations, never once has this happened — not even on the scale of a continent.10 The fact that Europe survived losing 25 to 50 percent of its population in the Black Death, while keeping civilization firmly intact, suggests that triggering the collapse of civilization would require more than 50 percent fatality in every region of the world.11 Even if civilization did collapse, it is likely that it could be reestablished. As we have seen, civilization has already been independently established at least seven times by isolated peoples.12 While one might think resource depletion could make this harder, it is more likely that it has become substantially easier. Most disasters short of human extinction would leave our domesticated animals and plants, as well as copious material resources in the ruins of our cities — it is much easier to re-forge iron from old railings than to smelt it from ore. Even expendable resources such as coal would be much easier to access, via abandoned reserves and mines, than they ever were in the eighteenth century. 13 Moreover, evidence that civilization is possible, and the tools and knowledge to help rebuild, would be scattered across the world. There are, however, two close connections between the collapse of civilization and existential risk. First, a collapse would count as an existential catastrophe if it were unrecoverable. For example, it is conceivable that some form of extreme climate change or engineered plague might make the planet so inhospitable that humanity would be irrevocably reduced to scattered foragers.14 And second, a global collapse of civilization could increase the chance of extinction, by leaving us more vulnerable to subsequent catastrophe. One way a collapse could lead to extinction is if the population of the largest remaining group fell below the minimum viable population — the level needed for a population to survive. There is no precise figure for this, as it is usually defined probabilistically and depends on many details of the situation: where the population is, what technology they have access to, the sort of catastrophe they have suffered. Estimates range from hundreds of people up to tens of thousands.15 If a catastrophe directly reduces human population to below these levels, it will be more useful to classify it as a direct extinction event, rather than an unrecoverable collapse. And I expect that this will be one of the more common pathways to extinction. We rarely think seriously about risks to humanity’s entire potential. We encounter them mostly in action films, where our emotional reactions are dulled by their overuse as an easy way to heighten the drama.16 Or we see them in online lists of “ten ways the world could end,” aimed primarily to thrill and entertain. Since the end of the Cold War, we rarely encounter sober discussions by our leading thinkers on what extinction would mean for us, our cultures or humanity. 17 And so in casual contexts people are sometimes flippant about the prospect of human extinction. But when a risk is made vivid and credible — when it is clear that billions of lives and all future generations are actually on the line — the importance of protecting humanity’s longterm potential is not, for most people, controversial. If we learned that a large asteroid was heading toward Earth, posing a greater than 10 percent chance of human extinction later this century, there would be little debate about whether to make serious efforts to build a deflection system, or to ignore the issue and run the risk. To the contrary, responding to the threat would immediately become one of the world’s top priorities. Thus our lack of concern about these threats is much more to do with not yet believing that there are such threats, than it is about seriously doubting the immensity of the stakes. Yet it is important to spend a little while trying to understand more clearly the different sources of this importance. Such an understanding can buttress feeling and inspire action; it can bring to light new considerations; and it can aid in decisions about how to set our priorities.

#### Disads are systematically underestimated

Wiener 16 – Jonathan B. Wiener, Law and Public Policy Professor at Duke University, University Fellow at the Resources for the Future, Past President of the Society for Risk Analysis, the scientific committee member at the International Risk Governance Council. [The Tragedy of the Uncommons: On the Politics of Apocalypse, Global Policy, 7(S1): Too Big to Handle: Interdisciplinary Perspectives on the Question of Why Societies Ignore Looming Disasters, 6-6-16, [https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12319]//BPS](https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12319%5d//BPS) \*edited for ableist language, brackets denote change

My point is not that rare global catastrophic ‘uncommons’ risks outweigh other risks. That depends on their probability and consequence compared to other risks, and the appropriate response to each will depend on the merits of the policy options. And I do not mean to say that uncommons risks are now (or should be) replacing or superseding commons risks, or that the two types necessarily proceed in sequence through time. Both types of tragedies may be occurring at the same time in different settings, or combined in the same setting. For example, extreme climate change may exhibit both a tragedy of the commons (free‐riding by multiple actors who would share the benefits of abatement, hence a need for collective action) and a tragedy of the uncommons (rare extreme risk of global catastrophe that remains underappreciated, regardless of the number of actors). Nor are uncommons risks an inevitable result of new technology. The main point here is that tragedies of the uncommons are a distinct problem from tragedies of the commons, with distinct causes and potential solutions. 2 The tragedy of neglect Tragedies of the commons arise when multiple rational actors, perceiving their options and individual payoffs, choose actions that are collectively undesirable (Hardin, 1968, p. 1244; Barrett, 2007). Tragedies of the uncommons, by contrast, can arise when even one actor neglects to appreciate a looming risk or mass damage, and mismanages the risk. Research in psychology and political economy indicates several reasons why extreme mega‐catastrophic risks are systematically neglected. Here I seek to bring greater clarity to the causes of rare catastrophic uncommons risks by identifying three main sources. Unavailability One important source of the neglect of uncommons risks is their very rare or ultra‐low‐frequency character. Extensive research shows that people exhibit heightened concern about risks that are ‘available’ to the mind, both in the sense of awareness and affect – the ability to envision and feel the importance of the event. These are often recent, visible, salient events that trigger strong visual images (Kahneman, Slovic and Tversky, 1982; Kuran and Sunstein, 1999; Weber, 2006; Pinker, 2011, p. 220). Such ‘available’ risks are then seen as more worrisome for the future. The ‘availability heuristic’ helps explain why so much regulation is crisis‐driven, adopted only after a crisis event spurs public outcry and mobilizes collective political action to overcome interest group opposition (Percival, 1998; Kuran and Sunstein, 1999; Birkland, 2006; Repetto, 2006; Wiener and Richman, 2010; Wuthnow, 2010; Barrett, 2016; Balleisen et al., 2016). A standard depiction of this phenomenon is that the public is more concerned about unusual dramatic risks, and less concerned about familiar routine risks, than are experts who take a quantitative approach combining likelihood and consequence (Breyer, 1993; Sunstein, 2005). This relationship is illustrated conceptually in Figure 1. The ‘availability heuristic’ helps explain why people appear to express greater concern about airplane accidents than automobile accidents, even though the statistical risk of airplane accidents (per km traveled, and possibly per trip) is lower: airplane accidents are shocking and dramatic and make news headlines, while automobile accidents are routine and familiar and become ordinary.2 Similarly, public concern may be greater regarding coal mining accidents than the (larger) public health risks from coal combustion air pollution, and regarding ebola than the (larger) toll from malaria. Figure 1, ‘Availability’ in expert vs public perceptions of risk, omitted. This difference in perspectives, depicted in Figure 1, also corresponds to many debates over the proper role of expert vs public appraisal of risk. Early studies showed significant differences between public vs expert appraisals of risk (Slovic, 1987; EPA, 1987; EPA, 1990). Some argued that these differences occur because the public makes errors about risks, such as exaggerating concern over unusual risks, while experts are more accurate, and that therefore policy should be based more on experts’ views in order to avoid overregulating small (but unusual) risks while underregulating large (but routine) risks (Breyer, 1993). Others argued that public appraisals were based not on factual errors but on value choices, such as preferring to avoid involuntary risks, which should govern public policy (Shrader‐Frechette, 1991). Still others argued that public values about risk might reflect prejudice and bias and should not necessarily be the direct basis for public policy (Cross, 1997). A typical assumption in these debates was that the public favored more regulation (at least of unusual risks) and the experts favored less. Thus this relationship might suggest that the public would also be more worried than experts about rare ‘uncommons’ risks. Indeed, some commenters have suggested that the public exhibits exaggerated paranoia about remote risks, overstating the likelihood and calling for precautionary policies that would be (in experts’ views) an overreaction (Efron, 1984; Wildavsky, 1997; Mazur, 2004). This may be the case for unusual but experienced events that are ‘available’ in the public mind and induce strong feelings such as dread; in response to experienced calamities, people are often highly motivated to take action, even if that action is ineffective or excessively costly (Wuthnow, 2010). For example, public reactions to the tragic 9/11 terrorist attacks included shifting from flying to driving with potentially greater injury risk (Deonandan and Backwell, 2011; Gaissmaier and Gigerenzer, 2012), and supporting two wars that were costly in money and lives (Stern and Wiener, 2008; Wuthnow, 2010). But with regard to ultra‐low‐frequency catastrophic risks, events that perhaps only occur once in eons, and hence are not experienced, it is not the case that the public is calling for overreaction while experts urge calm (Weber, 2006). Rather, it is experts, applying their quantitative methods, who are warning about future rare extreme risks such as abrupt climate change, artificial intelligence and large asteroid collisions (Posner, 2004; Bostrom and Cirkovic, 2008; Weitzman, 2009), while the public seems less interested if it takes these extreme risks seriously at all. My conjecture, supported by the evidence cited above (but worth further study and refinement), is that ‘tragedies of the uncommons’ add a twist to the typical debate about public vs expert risk appraisal. Adding ultra‐low‐frequency (not experienced) risks to the picture shows that it is not the case that the public always favors more regulation and experts less. For both routine risks and ultra‐rare risks, it is often experts who favor more regulation than the public. My conjecture of this twist in relative concern is depicted conceptually in Figure 2. Here, public concern is higher than experts’ concern for unusual and experienced (hence available) risks, in the middle region of the frequency dimension; but public concern is lower than experts’ concern both for routine familiar risks, and for ultra‐low‐frequency rare extreme risks. Figure 2, ‘Unavailability’ of extreme risks in expert vs public perceptions of risk, omitted. The reason for this reversal in relative appraisal at the very low end of the frequency spectrum is again related to the ‘availability’ heuristic. It predicts that people become concerned about recent, visible, salient events that trigger strong feelings. But the rare mega‐catastrophic risks are not recent, visible or salient. They have not been experienced, so the trigger for mental availability is lacking (Weber, 2006). Describing such rare risks, such as in a speech or in an opinion survey, is less effective in stimulating public reaction than an experienced risk (Weber, 2006). Relatedly, a longer time interval without experiencing a recurrence of a damaging event can lead to complacency (neglect due to unavailability) and increased vulnerability to a recurrence (which can then trigger new availability and alarm) (Turner, 1976). Although people may envision humans going extinct at some point centuries in the future (Tonn, 2009), and express pessimism about the future direction of humanity (Randle and Eckersley, 2015), that viewpoint may not translate into concern about specific risks warranting policy responses in the present (nor did these studies compare public with expert perceptions). Movies depicting rare unexperienced risks (e.g. the large asteroid collision in Deep Impact or Armageddon ; alien pathogens in The Andromeda Strain ; the rise of the machines in The Matrix ) may be viewed as humorous entertainment and even elicit laughter – though perhaps that is nervous laughter rather than neglect. There is some evidence that those who watched the film The Day After Tomorrow were more concerned about climate change afterward (Leiserowitz, 2004), though the audience was not randomly selected and may have been more concerned going in. It is unclear whether films can effectively ‘synthesize availability’; perhaps new techniques of virtual reality can do better, but they still may not call public attention to the most important uncommons risks, nor to the best policy responses. The role of experience in triggering the availability heuristic, and raising concern about available events in public appraisals of future risks, may be rooted in the ways the brain processes information. Humans process immediate risk stimuli in part through the amygdala, which manages fear and the instant choice to flee or fight (Ledoux, 2007). At the same time, using the prefrontal cortex, humans are able to envision hypothetical future scenarios and analyze choices among them (Gilbert and Wilson, 2007). These two neural pathways are sometimes dubbed ‘system 1’ and ‘system 2’ (Kahneman, 2011). One possibility is that the faster processing of system 1 is generating fear before the slower processing of system 2 can develop a more analytic appraisal; but the two systems may also be interacting, and system 2 can also generate fear after its analysis. Even if system 2 analysis is applied, the prefrontal cortex, when it envisions hypothetical scenarios of the future, appears to draw on experienced events (from the brain's memory centers) in order to construct a collage or pastiche of the future – a ‘prospection’ (Gilbert and Wilson, 2007; Schachter et al., 2008). Thus the human brain typically relies on ‘available’ experienced events even for its analytic prospection about future scenarios.3 If so, the ‘unavailability’ of rare extreme risks contributes importantly to their being neglected in public concern. A mid‐level example is the increase in parents seeking exemptions from vaccines for their children: past success in controlling a disease may create unavailability and neglect (though subsequent disease outbreaks may revive concern). A more extreme example is that a very large asteroid (> 10 km diameter) has not hit the earth for about 65 million years (Reinhardt et al., 2016), evidently causing the demise of the dinosaurs and about 75 per cent of all life on earth (a 15 km asteroid hit Chicxulub, off the Yucatan peninsula of Mexico, and another dubbed Shiva may have hit near the Indian land mass about 40,000 years later (Lerbekmo, 2014)). Smaller objects hit the earth frequently, and regional damage was caused by the impacts at Tunguska (1908) and Chelyabinsk (2013) (about 19 m in diameter, see Borovicka et al., 2013). The Chelyabinsk impact prompted calls for increased detection efforts. Early detection enables a longer lead time to devise new deflection methods. Improved probabilistic analysis indicates that rare asteroid impacts, even < 1000 m diameter, may be more risky than commonly thought (Reinhardt et al., 2016). The neglect of rare uncommons risks in public psychology may in turn yield neglect in politics. This is a distinct additional factor on top of others that may also contribute to such neglect, such as free‐riding (if the problem is also a ‘commons’ problem requiring collective action by multiple actors); short‐term costs vs long‐term benefits (if the risk would occur in the long‐term future) mismatched with the short‐term election cycles; inattention to the plight of people far away in other countries and cultures; and others. Individual neglect of rare global catastrophic risk may be compounded by societal disdain for such warnings; despite the prevalence of apocalyptic scenarios in religion and literature (Lisboa, 2011), the person warning that ‘the end is near’ is often viewed as [absurd] ~~insane~~ (and might be). That most doomsday stories are unfounded, though, does not mean that all rare catastrophic risks are illusory. Mass numbing A second source of the neglect of uncommons risks is their large magnitude of impact. It might seem that larger impacts should prompt more, not less, concern. For experts applying quantitative analytic methods, this appears to be the case. But for the general public, a surprising finding of recent psychology research is that a large or ‘mass’ impact yields ‘numbing’ (Slovic, 2007; Slovic et al., 2013). In these studies, people are asked in opinion polls (stated preference surveys) their willingness to pay (WTP) to save different numbers of other people from some risk. One might expect people to offer more money to save more people (a linear relationship, with each life valued the same), or even an increasing amount to reflect the greater value of averting a catastrophe (supra‐linear). Or, one might expect people to offer amounts that rise but at a declining rate, such as if willingness to pay (WTP) reaches some plateau when the risk becomes large (diminishing marginal value of life saving). (In stated preference surveys, ability to pay may not be a strong constraint on responses.) These relationships are illustrated in Figure 3. Figure 3, ‘Mass numbing’ in valuation of risk, omitted. Surprisingly, Slovic recounts several studies finding that none of these depicts public attitudes; rather, in these studies, willingness to pay rises at first, but then as the number of people at risk grows, willingness to pay declines – not just marginally (as in the plateau relationship) but absolutely, to levels below the amount people were willing to pay to save one or two individuals. And the number of people at which the stated willingness to pay peaks and begins to decline is not very high – sometimes fewer than ten people at risk. Slovic (2007) terms this ‘psychic numbing’ or ‘mass numbing’, and argues that it helps explain public neglect of genocide and other mass calamities (for further evidence, see Rheinberger and Treich, 2015). There is also evidence that it occurs for valuing nonhuman life (environmental conservation) (Markowitz et al., 2013). Hence the mass catastrophic impacts of uncommons risks may face undervaluation. One reason for this response may be feelings of personal inefficacy (Vastfjall et al., 2015): as the number of lives rises, respondents may feel overwhelmed and doubt that their contribution can really make a difference to such a large problem. The ‘end of the world’ may be too much for people to act on; it may feel disabling rather than mobilizing. Relatedly, people may have a limited capacity to worry (Weber, 2006), and thus may deflect problems so large that they would consume all of that capacity. A second reason for mass numbing may be the stronger public response to an identified individual – such as an identified victim or an identified villain. The public may be eager to save the baby who fell down the well, or the refugee child drowned on the beach, or the three whales stuck in the ice, but less willing to save a large and unidentified population of victims (Kogut and Ritov, 2005; Small and Loewenstein, 2005; Small, Loewenstein and Slovic, 2007). Kogut and Ritov (2005) and Slovic (2007) report that WTP to save a single victim also increases if the victim is described in more detail, and even more if the victim is given a face. Vastfjall et al. (2014) find that compassion is highest for a single child, and may decline after just one. Slovic (2007, p.79) quotes Mother Teresa: ‘If I look at the mass I will never act. If I look at the one, I will.’ These studies explain why charitable organizations try to feature a ‘poster child’ for a broader cause. But extreme mega‐catastrophic risks typically lack a single identified individual, unless rendered in fiction (e.g. a movie). The public may also be more eager to combat an identified villain than a faceless natural disaster or a ubiquitous social problem (Sunstein, 2007, p. 63, on the ‘Goldstein effect’). This may help explain public outcry at villains highlighted in the news media, such as Osama Bin Laden and Saddam Hussein, compared with the apparently lesser public outcry regarding tsunamis (Indian Ocean 2006, killing 200,000 people; Japan 2011, killing 20,000 people), global climate change harming large populations, or large asteroids hitting the earth.

#### Use consequences

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Danny, In Defense of Consequentialism: A Response to Shadi Hamid," Apr 19, <https://thewideninglens.wordpress.com/2016/04/19/in-defense-of-consequentialism-a-response-to-shadi-hamid/>

My difference of opinion is fundamental: I believe most US foreign policy to be short-sighted, and consequentialism, or the weighing of long-term ramifications against the initial intended effect of a particularly intervention to represent the ideal method of policymaking. Policies cannot solely be judged on intention, due to the frequency with which good intentions produce negative outcomes, nor can they be judged solely on initial effects due to the long-running causal chains produced by order-altering things like military interventions. However, Hamid is right that it is impossible to foresee some ramifications (even if we can see general correlations) of foreign policy, but he doesn’t apply that standard of doubt consistently across his analysis. Early in the essay, Hamid makes the point that to evaluate the Libyan intervention, it is necessary to compare the current situation with the counterfactual: what would Libya look like if the US hadn’t intervened. In general, the assertion is correct, but the practice of counterfactuals is tricky. Hamid’s analysis of where the Libyan conflict was at when the US intervened is enlightening, but his conclusion that Libya would likely look like Syria today had the US not intervened is highly questionable. Political prediction, especially on rare events like mass atrocities or civil wars, is really, really hard. And when you consider all the differences between Libya and Syria (total population, population density, salience of sectarian divides, regime configuration, military capability of opposition, etc.) along with all contingencies that could have occurred in the past four years, it is impossible to say with any certainty that Libya would bear a resemblance to Syria. Syria is merely a convenient standard of comparison because it’s an ongoing civil war in the Middle East, but saying Libya would be Syria doesn’t actually tell us that much about Libya or the effects of intervention. It’s not that the intervention can’t be justified with counterfactuals, but they need to be more carefully constructed. The central thrust of Hamid’s essay is to deride what he calls consequentialism, or evaluating the efficacy of foreign policy based on events years after the initial intervention in the target location. For Hamid, such an approach is particularly problematic because it a policy cannot be retroactively deemed a mistake if the limited goal of the intervention is achieved initially. Therefore consequentialism creates an impossibly high bar for foreign policy decisions: unless a foreign policy results in a peaceful, liberal democracy, than it’s a failure. This is, however, a major straw man. Certainly there are some critics that would deem the Libyan intervention a failure based on this standard, but Hamid lumps in those with reasonable concerns that a civil war (likely to continue for many years based on what we know about civil wars and foreign intervention) at least partially produced by the NATO intervention will have more negative long-term effects on Libyans than Gaddafi’s intended repression. Worrying about consequences does not preclude making foreign policy decisions. Recognizing that every decision has potential positive and negative effects is no more than an accurate framework for analyzing policy. There are an additional two problems with Hamid’s argument here. First, the dismissal of consequentialism is one of the central dynamics that leads Western policymakers to struggle with conflict prevention. Short-term thinking produces short-term solutions. Policymakers become trapped in a vicious circle of continual crises that overwhelm them and prevent longer-term thinking that could go a long way in preventing violence. Second, Hamid’s insistence that the initial moral righteousness of an intervention negates any negative effects, is deeply problematic. As many before me have argued, focusing only on moral imperatives disincentives careful planning and allows policymakers to wash their hands of responsibility if the situation starts to go south. Evaluating military interventions isn’t personal morality, because very rarely can doing the right thing in your personal life lead to deaths of thousands of people. Afghanistan is a valid example. The United States was going after the Taliban in response to 9/11 initially, but the war has had disastrous long-term effects for the country. It would take quite a bit of chutzpah to declare it a success. Moral arguments without strategic and humanitarian (writ large) considerations are also prone to abuse, because liberal interventionists and neoconservatives aren’t actually that far apart: both believe in the wisdom of Western democracies to improve the world through military force. Without more consequentialist standards, there’s not a clear line the prevents Iraq-like decisions. So Hamid’s own argument that Obama being right about Iraq decreases his likelihood he’ll be right about other situations is undermined by a lack of a standard that allows leaders to tell the difference between the two.

#### We access their framing through turns case and counterplans – proves we have intentions of resolving structural violence.

### 1NC — AT: Advantage 1

#### Tagline of the first card proves circumvention — they will use other covers

#### Not the root cause of racial discrimination in sports — players can still get discriminated on the court / in games, still get less payment offers, etc. — if anything, the aff makes discrimination worse by letting companies put more money into white players instead of players of color

## 1NC — Academy Adv

### 1NC — T/L

#### **The aff is a double turn with the Dimaggio ev --- they allow athletes to treat sports as a job which this evidence says is a gigantic waste of time**

#### \*\*\*University funding is an alt cause KU

Ted Tatos 19 (EconONE Research Quantitative Economist, “NCAA Amateurism as an Anticompetitive Tying Restraint” <https://www.researchgate.net/publication> /334701353\_NCAA\_Amateurism \_as\_an\_Anticompetitive\_Tying\_Restraint, July 2019)//TNL

I argue that evidence from actual world transactions, rather than abstract theoretical constructs, informs the existence of separate markets for intercollegiate athletics and postsecondary academics, two distinct goods whose bundling under the NCAA collegiate model has been mistaken for a single unitary product. The existence of separate markets, coupled with the NCAA’s market power in the tying market and the presence of foreclosed sales, should result in condemnation of the NCAA’s collegiate model as unlawful under the current bifurcated rule of reason or quasi-per se rule.

This article also offers implications for public policy. Every nation in the world, save the United States, has eschewed the simultaneous integration of athletics and academics under an NCAA-type model. The preservation of this model of “amateurism,” and the labor exploitation it engenders, has no economic justification. Its erroneous perception as a “revered tradition” is nothing more than mirage and its justification based on its temporal longevity grants it no more merit than bankrupt arguments favoring the prohibition of interracial marriage in Loving v. Virginia.170 As the Supreme Court observed in Obergefell v. Hodges,171 “History and tradition guide and discipline the inquiry but do not set its outer boundaries.” Even recognizing such guidance, the “tradition of amateurism” is characterized by shifting definitions, a comparatively minuscule time period relative to the marriage issue in Obergefell, and an increasing divergence between substance and form. Few are so removed from reality as to fail to notice the increasing commercialization of intercollegiate athletics and the benefits accrued to virtually all but the labor. The detrimental effects of this “tradition” do not restrain themselves to athletics. Coupled with the imposition of funding cuts to higher education, they contribute to the fundamental shift in the view of the undergraduate student not as a pupil to be educated but as a customer to be served in return for a financial reward to the institution. Modern society publicly funds education based on the assessment that it generates positive welfare returns. An educated population promotes the social welfare. Some of that benefit can be readily measurable through the increased pay that may be commensurate with the acquisition of higher skills, and some that manifests itself through positive externalities. Far from embracing and supporting this goal, the NCAA’s model of amateurism imposes both anticompetitive restrictions and harms the educational mission of postsecondary educational institutions in the United States.

#### Aff doesn't end TV deals, private sponsors

#### Dimmagio is a link to the aff - aff professionalizes college sports - encourages athletes to be student in name only, and fall back on degrees after college where they're not set up.

#### Donors to universities are an alt cause -- shape research and ideology of universities -- that's Giroux.

## 1NC — Samoa Adv

### 1NC — T/L

#### Can’t solve this advantage — the aff doesn’t end the NCAA — they can still profit off of them because they are recruiting them — that makes their impact inevitable as per the Kukahiko evidence

#### Tons of alt causes KU

**Wolfe,** Australia Freelance Historian**, 2006**

[Patrick, “Settler colonialism and the elimination of the native,” Journal of Genocide Research, 12.21.06, Vol. 8 p.387-409, , accessed 7.11.18 ct @ ddi]

The logic of elimination not only refers to the summary liquidation of Indigenous people, though it includes that. In common with genocide as Raphae ¨l Lemkin characterized it,6 settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base—as I put it, settler colonizers come to stay: invasion is a structure not an event.7 In its positive aspect, elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence. The positive outcomes of the logic of elimination can include ofﬁcially encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions

[marked]

such as missions or boarding schools, and a whole range of cognate biocultural assimilations. All these strategies, including frontier homicide, are characteristic of settler colonialism. Some of them are more controversial in genocide studies than others.

# 2NC

## T — Business Practices

#### It must be for profit entities — courts agree

Benjamin 67 (BENJAMIN, J. Opinion in Kochenthal v. Kochenthal, 28 A.D.2d 117, 282 N.Y.S.2d 36 (App. Div. 1967). Google scholar caselaw. Date accessed 7/20/21).

Also worthy of quotation is the opinion of the learned Special Term in the case at bar. Inter alia, he said (52 Misc 2d 437, 441, 442-443):

"I do not hold to the belief that the statute in question must be so narrowly construed as to be applicable only to pecuniary transactions of a commercial nature. It seems to me that the term `business' should not necessarily be limited to commerce among the states and thus be applicable only to people and corporations engaged in pecuniary gain. I know of no concept of contract law which would exclude agreements between husband and wife in such a manner as to draw a mantle of protection over either the husband or the wife in the event that one of them becomes a resident of another State and proceeds to violate a written instrument duly made and executed between them. \* \* \* To extend the application of the procedural law by means of the `long arm statute' to the business world and to every individual who sees fit to drive his automobile in a State other than that in which he resides and thus become liable to litigation in that State in the event of an accident, but to slam the door shut upon a husband or wife who have executed an agreement between them which meets every test of contractual law, would not, it seems to me, be in conformity with either the letter or the spirit of our system of jurisprudence as it exists today, and would certainly be throwing a roadblock in the administration of justice as this court understands that term. \* \* \*

"Today's more flexible formula recognizes `such contacts' of the defendant `with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought 121\*121 there' (International Shoe Co. v. Washington, [326 U. S. 310, 317] supra). The `quality and nature of the activity in relation to the fair and orderly administration of the laws' are to be weighed. (International Shoe Co. v. Washington, supra, p. 160). This same formula is `equally applicable to jurisdiction over individuals.' (Davis v. St. Paul-Mercury Ind. Co., 294 F.2d 641, 647 [4th Cir.].)"

I agree with the reasoning and holding in Van Wagenberg (supra) and Spitz (supra). I similarly fully agree with the analysis and reasoning of the learned Special Term in this case. Parenthetically, I might also note that in Estin v. Estin (334 U. S. 541) the court clearly indicated that the wife's right of support is a property right separable and divisible from the marital status.

#### AND…

Pennsylvania Supreme Court 9 (Justice SAYLOR. OPINION in Rendell v. State Ethics Com'n, 983 A.2d 708, 603 Pa. 292 (2009). Google scholar caselaw. Date accessed 7/20/21).

On October 3, 2008, the en banc Commonwealth Court issued a published opinion and order, see Rendell v. State Ethics Comm'n, 961 A.2d 209 (Pa.Cmwlth.2008), concluding that the term "business," as defined in the Ethics Act, excludes non-profit entities. In reaching this conclusion, the court relied upon In re Nomination Pet. of Carroll, 586 Pa. 624, 896 A.2d 566 (2006), where this Court suggested that, in the context of required financial disclosures for election matters, a non-profit organization is not a business as defined by the Ethics Act.[4] In this respect, the court rejected the Commission's contention that Carroll was not controlling because it did not definitively hold that non-profits are not businesses under the Ethics Act. Although the Commonwealth Court agreed with the Commission that different policies underlie the Act's requirements in connection with candidates' financial interest statements and with the avoidance of conflicts by public officials, it noted that the term "business" is specifically defined in the Act and indicated that it was not free to disregard this Court's interpretation of that term as excluding non-profits. Thus, in view of precedent, the court granted summary relief to Appellees and denied it to the Commission, declaring that the Secretaries would not be under a conflict of interest. See Rendell, 961 A.2d at 216. In light of its disposition, the court declined to reach the second substantive issue—whether the act requires the Governor to appoint someone outside the department head's chain of command in the event of a conflict. See id. at 216 n. 9.

## CP — Advantage

## Adv — Stolen Wealth

#### Discussion of ex-risks does not displace focus on structural violence – it allows an injection of complexity

**Barkawi 12** – Professor Politics at the New School for Social Research (Tarak, “Of Camps and Critiques: A Reply to 'Security, War, Violence'” Millennium - Journal of International Studies, Vol 41 No 1, p 124-130, SagePub)

**A** final **totalising move** in ‘Security, War, Violence’ **is the idea** that the study of war should be subsumed under the category of ‘violence’. The reasons offered for this are: violence does not entail a hierarchy in which war is privileged; **a focus on violence** encourages us to see war in relational terms and **makes visible other kinds of violence besides that of war**; and that the analysis of violence somehow enables the disentangling of politics from war and a proper critique of liberal violence.22 I have no particular objection to the study of violence, and I certainly think there should be more of it in the social sciences. **However, why and how this obviates or subsumes the study of war is obscure to me. Is war not historically significant enough to justify inquiry into it? War is a more specific category relative to violence in general**, referring to reciprocal organised violence between political entities. I make no claims that the study of war should be privileged over that of other forms of violence. **Both the violence of war, and that of,** say, **patriarchy, demand scholarly attention, but they are also distinct** if related topics requiring different forms of theorisation and inquiry. As for relationality, the category of war is already inherently relational; one does not need the concept of violence in general to see this. **What** precisely **distinguishes war from** many **other kinds of violence**, such as genocide or massacre, **is that war is a relational form of violence in which the other side shoots back. This is ultimately the source of war’s generative social powers**, for it is amidst the clash of arms that the truths which define social and political orders are brought into question. **A broader focus on violence in general risks losing this central, distinctive character of the violence of war**. Is it really more theoretically or politically adequate to start referring to the Second World War as an instance of ‘violence’? Equally, while I am all for the analysis of liberal violence, another broad category which would include issues of ‘structural violence’, I also think **we have far from exhausted the subject of liberalism and war, an important area of inquiry** now dominated by the mostly self-serving nostrums of the liberal peace debates. What perhaps is most interesting about Aradau’s remarks on violence is that she assumes we know what war is. So, for example, she suggests that we attend to a continuum of violence in which war is considered alongside ‘insurrections, revolts, revolutions, insurgencies, rebellions, seditions, disobediences, riots and uprisings’.23 Apparently, on her understanding, these other things are not war, even though most of them typically involve reciprocal, organised violence. This is precisely to take as given the IR disciplinary view of ‘real interstate war’ that underlies Correlates of War and other mainstream work. This is the definition of war that I sought to critique in ‘From War to Security’, a critique Aradau has overlooked. I was posing new questions and possibilities for the study of war, not proffering definitive answers about what war is and what it is not, or about where and when it starts and ends. It is, I would suggest, Aradau who is most concerned about hierarchy and privilege, particularly in respect of perceived slights to Critical Security Studies and her demand that any study of war be in dialogue with Critical Security Studies. In this, she overlooks the fact that, conceived another way, with a more holistic vision of the community of relevant scholars, my article was already an engagement with critical inquiry into security relations. Perhaps it was the opening rhetoric of my article that inspired Aradau’s ire, my reference to partygoers from Copenhagen and Aberystwyth dancing on graves, or my suggestion that contemporary ‘wider agenda’ security scholars know rather less about the composition of carrier battle groups than did their traditional predecessors.24 But does anyone seriously doubt that ‘wider agenda’ scholars are less familiar with histories and sociologies of wars and militaries than were the traditional predecessors, who even so still managed to overlook their significance? These passages were meant to serve a very specific purpose, to denaturalise our images of the new and old security studies, and to open up the reader to the possibility that, with respect to the study of war, these fields of study share more in common than is conceivable within the current terms of debate. **Neither traditional nor ‘wider agenda’ security studies are centrally interested in war. Given the significance of war in the human past and present, and the dire state of the study of war in the Anglo-American academy, this seems to me a serious problem for critical thought**.

# 1NR

## DA — FTC Tradeoff

#### Resources are sufficient for effective health enforcement now

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

During my years as an executive in the FTC’s Bureau of Competition and as FTC general counsel, I became quite familiar with FTC antitrust development and policy research applicable to healthcare. In my opinion, the FTC staff possesses the legal tools (with the exception of the nonprofit limitation, discussed earlier) to fully investigate and take action against anticompetitive behavior in this sector. What’s more, the FTC has had an excellent enforcement track record, including in hospital mergers. It currently is addressing a broad range of healthcare-related activity. Existing agency guidance, including the 2020 Vertical Merger Guidelines, provide ample support for appropriate, evidence-based, economically sound enforcement. New general legislation is not needed.

#### Enforcement high, resources key, sustained focus solves consolidation

King 21, John and Marylyn Mayo Chair in Health Law and Professor of Law at the University of Auckland (Jaime, “Stop Playing Health Care Antitrust Whack-A-Mole,” Harvard Bill of Health, <https://blog.petrieflom.law.harvard.edu/2021/05/17/health-care-consolidation-antitrust-enforcement/>)

The time has come to meaningfully address the most significant driver of health care costs in the United States — the consolidation of provider market power. Over the last 30 years, our health care markets have consolidated to the point that nearly 95% of metropolitan areas have highly concentrated hospital markets and nearly 80% have highly concentrated specialist physician markets. Market research has consistently found that increased consolidation leads to higher health care prices (sometimes as much as 40% more). Provider consolidation has also been associated with reductions in quality of care and wages for nurses. In consolidated provider markets, insurance companies often must choose between paying dominant providers supracompetitive rates or exiting the market. Unfortunately, insurers have little incentive to push back against provider rate demands because they have the ability to pass those rate increases directly to employers and individuals, in the form of higher premiums. In turn, employers take premium increases out of employee wages, contributing to the growing disparity between health care price growth and employee wages. As a result, rising health care premiums mean that every year, consumers pay more, but receive less. Dynamic health care antitrust enforcement is an idea whose time has finally come, but addressing the ills of consolidation in America’s health care system will require a comprehensive and multi-faceted approach. We have seen repeatedly how an entity with market power can respond quickly to negate the benefits of unilateral policy approaches, leading to an endless cycle of competition policy whack-a-mole. For instance, in the last decade, as health system merger and acquisition challenges became more successful, joint ventures and affiliations, especially with urgent care centers and private equity firms, became more frequent. Further, COVID-19 has exacerbated the threat of health care consolidation by leaving many independent hospitals and physician groups struggling financially and vulnerable to acquisition. Fortunately, the Biden/Harris administration appears uniquely poised to implement a comprehensive initiative to address health care consolidation. First and foremost, Biden has positioned key personnel with antitrust expertise, often with distinct knowledge of the health care industry, throughout his administration. For instance, the nomination of former California Attorney General Xavier Becerra, who championed health care antitrust efforts in the state, as Secretary of Health and Human Services was an inspired choice and presents a unique opportunity to enhance competition through Medicare policy. Biden’s appointment of Tim Wu to the National Economic Council and nomination of Lina Khan to one of five seats on the Federal Trade Commission (FTC) also signal a strong commitment to strengthening antitrust enforcement writ large. Second, the Biden administration should support recent efforts in Congress to address health care antitrust concerns. Senator Amy Klobuchar (D-MN) recently introduced a bill, the Competition and Antitrust Law Enforcement Reform Act, which introduces sweeping reforms that would expand funding to the Department of Justice (DOJ) and the Federal Trade Commission, strengthen prohibitions against anticompetitive mergers by forbidding mergers that “create an appreciable risk of materially lessening competition,” shift the burden of proof to require merging entities to demonstrate that the merger will not harm competition, and take steps to prevent dominant firms from engaging in anticompetitive conduct. Likewise, Senator Patty Murray’s (D-WA) Lower Health Care Costs Act of 2019 demonstrated a sophisticated understanding of how health care entities can use market power to obscure health care prices and negotiate anticompetitive contract terms, like all-or-nothing bargaining, gag clauses, and anti-steering provisions, and provided solid policy solutions to both issues. Providing support for bills like these will be essential to developing a comprehensive competition strategy. Third, on September 17, 2020, the Federal Trade Commission announced much needed plans to revamp the Merger Retrospective program. The Biden administration should provide substantial funding and resources to reinvigorate this program. Merger retrospectives, like Steven Tenn’s Sutter-Summit retrospective in 2008, have been pivotal and provided the FTC with much needed insight on how hospital mergers have leveraged the market power necessary to increase prices and harm consumer welfare. A newly revamped Merger Retrospective program holds great promise for antitrust enforcement in health care, especially if used to gain insight into whether and how vertical and cross-market health care mergers create anticompetitive harms. While a majority of consolidating transactions in health care include vertical or cross-market acquisitions, federal antitrust enforcement has been absent in this area. Fourth, Congress and the Trump Administration have moved mountains to expand price transparency in health care, which will greatly facilitate research into the effects of different types of health care consolidation and contracting practices on prices. The Biden Administration should stand firm on requiring hospitals, insurers, and self-insured employers to report negotiated health care prices, and dedicate resources to analyze that data to determine both the drivers of health care prices and the effectiveness of public policy initiatives designed to control prices. In addition, the Biden administration should promote transparency in health care consolidation by requiring all health care providers (hospitals, clinics, provider organizations, etc.) to report any material change in ownership to the Department of Health and Human Services and the FTC to allow the agencies to monitor consolidation patterns and look for stealth consolidation. All winds seem to blow in the direction of the Biden Administration taking significant action to address rampant consolidation in health care and its harms. Yet, doing so requires funding and willpower. Funding for the FTC and DOJ has decreased in relative dollars since 2010, despite a near doubling in merger filings. The FTC and DOJ need increased funding to expand their ability to review and challenge anticompetitive transactions and practices by dominant health care entities, revamp and expand the scope of their Merger Retrospective Review program, and provide technical assistance to state antitrust enforcers. Furthermore, the FTC should be granted the authority and requisite funding to challenge anticompetitive behavior by non-profit organizations, as they have developed a significant expertise in health care provider markets. Challenging the existing market dynamics in health care also demands the political will to take on some of the biggest industries in the nation (who make some of the largest lobbying contributions). As we have seen in recent challenges to the practices of dominant health care providers, the battle will be hard-fought. Yet, the alternative — allowing the health care industry to continue to siphon off ever-increasing portions of the economy and wages — is unacceptable and irresponsible. The Biden administration must make every attempt to improve the functioning of health care markets where possible, and implement price regulations in markets where competition has failed. Antitrust enforcement agencies must use the full force of their legal arsenal to restore competition in health care — and this may include breaking up large health systems that exploit their market power. For too long, the notion of “unscrambling the egg,” i.e., unwinding a previously consummated hospital merger, has been a non-starter in enforcement circles. To truly restore some form of competition in many health care markets, antitrust enforcers need to break up large systems, or at least have a credible threat of doing so. The Biden administration has an opportunity to reinvigorate our health care markets, but only if it is willing to adopt a bold, determined, and comprehensive competition strategy.

#### Health care enforcement is coming now---but it could be triaged in the case of overstretch

Galvin 9-10-2021 (Gaby, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators,” *Morning Consult*, <https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/>)

When President Joe Biden tapped vocal critics of big tech companies for key antitrust roles, companies like Amazon.com Inc. went on high alert. But he’s pledged to crack down on anticompetitive behavior across sectors — including “unchecked mergers” in health care, and former officials and industry watchers say hospitals and other groups should tread carefully. Officials like Lina Khan, who was sworn in as chair of the Federal Trade Commission in June, and Tim Wu of the White House’s National Economic Council, haven’t gone public with how they plan to tackle health care consolidation. But early action from the administration points to hospital price transparency and heightened merger scrutiny as top priorities. “This administration is going to take a stronger approach to any antitrust enforcement than we’ve previously seen,” said Alexis Gilman, an antitrust lawyer at Crowell & Moring who worked in the FTC’s competition bureau, primarily during the Obama administration. “The bar of scrutiny does seem to have been raised.” Biden laid out his broad antitrust agenda in an executive order in July that singled out rural hospital closures and higher hospital prices in markets with little competition as reasons to support stronger FTC guidelines for health care mergers. Now, Gilman said the FTC appears to be taking more time to review details on proposed mergers that may have otherwise been cleared quickly or seen as “non-problematic.” The FTC’s public stances so far “reflect an agency that believes that prior enforcement has been a bit lax, and they’re going to tighten that up,” Gilman said. Health systems feeling the heat Industry watchers are taking cues from Sutter Health’s $575 million antitrust settlement, which received final approval from a federal judge in late August after a yearslong legal battle over allegations that the nonprofit health system in California engaged in price gouging. Notably, Health and Human Services Secretary Xavier Becerra sued Sutter Health in 2018 when he was California’s attorney general, and before joining the Biden administration, he said in March that he would continue to promote health care competition so patients “aren’t left holding the bag when big players dominate the market.” Given Becerra’s involvement, the case could offer a roadmap for health care competition policy in the Biden era at both the state and federal levels, said Elizabeth Mitchell, president and chief executive of the Purchaser Business Group on Health, which helped bring together employers and unions to file the lawsuit against Sutter Health. “I think it is very important that some of what we achieved in the Sutter case is applied more broadly,” Mitchell said. That includes efforts to promote hospital price transparency, a priority left over from the Trump administration. Meanwhile, Gilman points to the Sutter Health case and a federal settlement with North Carolina-based Atrium Health in 2018 as signs that health systems should “be a bit more cautious” when drawing up contracts that could be seen as anti-competitive, such as those that include measures that ban insurers from “steering” patients toward less expensive medical care or revealing pricing information. “I think there is — as a result of those two enforcement actions — increased risk, at the least for the largest systems that have meaningful shares in their local markets,” Gilman said. Provider groups are readying their defenses. In August, the American Hospital Association sent a letter to antitrust officials calling for more reviews of health insurance companies, saying payers have “largely escaped close scrutiny for conduct and practices that adversely impact both consumers and providers.” The group declined an interview request. David Maas, an antitrust lawyer at Davis Wright Tremaine LLP who works with health care providers, noted that ramped-up scrutiny on hospitals could hurt smaller physician groups or rural hospitals that are the only option for care in some communities. “We already have aggressive enforcement in that space, and it often is good and leads to more competitive marketplaces,” Maas said. “But just in the interest of being more aggressive, to push for even more enforcement in health care, I think could lead to some unfortunate outcomes, because a lot of health care providers are struggling.” Hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared with 43 in the same time period last year, according to a Kaufman Hall analysis. While the number of deals has fallen, revenue is on par with previous years as health systems focus more on regional partnerships in new markets rather than acquiring smaller independent hospitals, the analysis said. Other health industries in regulatory crosshairs Hospitals aren’t the only health care groups getting a closer look in the Biden era. The FTC has also signaled interest in vertical mergers, when companies that don’t compete directly consolidate, and is looking to unwind life science company Illumina Inc.’s $7.1 billion acquisition of Grail Inc., which was finalized last month despite a lack of clearance from the FTC or European regulators. In Sept. 2 letters to GOP lawmakers who questioned the agency’s stance, Khan said the FTC is at a “crossroads” and has taken an “unduly permissive” approach in the past that’s allowed for massive companies to form across industries. Antitrust lawyers are closely watching the Illumina-Grail case, which will be “the first vertical merger case the FTC litigates in decades,” Gilman said. Another key deal to watch: Michigan-based Beaumont Health and Spectrum Health said last week they’re proceeding with a merger that would give the combined health system control of 22 hospitals, an outpatient business and a health plan covering 1 million people. If approved, the merger is expected to be finalized this fall. Collaborations between payers and providers — forming so-called “payviders” — have become increasingly common, with hospital systems launching their own health plans and health insurance giants such as UnitedHealth Group Inc. moving into health care delivery in recent years. “In the coming years, the for-profit insurers will start following United’s lead in acquiring, or effectively acquiring, more and more providers,” Maas said. Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals. “The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.” RELATED: Pharmacy Benefit Managers Are Feeling a Push From States to ‘Turn the Lights on’ to Their Business Practices Regulators picking their battles Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

#### **Enforcement against multiple companies magnifies the link.**

Sutner 20, News Director @ TechTarget. (Shaun, 12-15-2020, "Efforts to break up big tech expected to continue under Biden", *SearchCIO*, <https://searchcio.techtarget.com/news/252493702/Efforts-to-break-up-big-tech-expected-to-continue-under-Biden>)

Biden pushed on antitrust

Antitrust activists, though, are optimistic about the prospects of a Biden administration clamping down on big tech -- an outcome they argue is long overdue, with decades of light enforcement of antitrust laws. They are pushing Biden toward aggressive antitrust policy. Thirty-three antitrust, consumer and progressive groups in a letter on Nov. 30 urged Biden to reject the influence of big tech vendors and to exclude big tech executives, lobbyists, lawyers and consultants from his administration. Prominent among the signatories was Public Citizen, the liberal consumer advocacy group that has called for Biden to triple the FTC's annual funding, from $400 million to $1.2 billion. "At the front end we want these investigations to be pressed. There are supposed to be investigations of Amazon and Apple and we believe there are cases to be brought there," said Alex Harman, competition policy advocate at Public Citizen and former chief legal counsel to Sen. Mazie Hirono (D-Hawaii). "It's a lot to bring big antitrust cases against multiple companies, and that requires resources," Harman said. "As a lawyer, I don't want to say 'Biden does this,' but we want results that structurally change these companies. We don't want quick resolutions and quick settlements."

#### Congress hates the plan. They’re in the pockets of chancellors and Athletics Directors.

Jenkins 21, columnist @ Wa Po (Sally, “The college sports debate comes to Capitol Hill, athletes not invited,” Washington Post, <https://www.washingtonpost.com/sports/2021/06/08/congress-ncaa-nil-senate-commerce-hearing/>)

There is a continual undertow on NCAA issues that pulls even the most well-meaning people adrift. It’s a current of sentiment that says others know what is best for college athletes, who should run along and play while the grown-ups make the real decisions. A powerful Senate committee is about to hold a consequential hearing on the name, image and likeness rights of college athletes, and the list of people who will publicly testify looks like a jury from the 1950s. Six guys, most of them silver-haired, not one under 45. No women. You can see the problem. I mean, you will literally see it Wednesday morning, when the Senate Committee on Commerce, Science and Transportation convenes to hash over NIL rights. Many senators are genuinely interested in NCAA reform; some of them have been working on achievable bipartisan NCAA legislation for a while and are asking good questions about the institution. But that’s just it — the focus is always on the institutions. And so, NCAA President Mark Emmert again will be the lead witness, his brow furrowed, as he tries to decide what color paint might best cover up the rickety, peeling and disorderly house his “institution” really is, hoping to divert your attention from the thousands of athletes holding it up with the muscles of their backs. College softball coaches decry treatment by NCAA: ‘What’s lower than an afterthought?’ NCAA issues are hard. Working on them is like hacking through mangrove thickets. But they would be less hard if the Honorables would focus less on the institutional impact of NIL legislation and more on the personal. The simple fact is that a person’s natural-born name and attendant economic rights are inherently their own property. That the NCAA is having trouble unwinding the problem of its own creation, that it has immorally built a flush economy by purloining the images and likenesses of others and refused to stop despite a decade of court reversals and other warnings, should not hold up federal NIL legislation a moment longer. And yet. Over the past year, eight pieces of federal legislation have been proposed, from Sen. Roger Wicker’s (R-Miss.) Collegiate Athlete Compensation Rights Act, to Sen. Jerry Moran’s (R-Kan.) Amateur Athletes Protection and Compensation Act, to Sen. Chris Murphy’s (D-Conn.) College Athlete Economic Freedom Act. None has passed, while leaders continue to wrangle in various committee hearings over how best to protect the “institution.” Similar hearings with similar witness lists have been held in various committees: the Senate Committee on Health, Education, Labor and Pensions; the Senate Judiciary Committee; and the Senate Subcommittee on Manufacturing, Trade and Consumer Protection. The differences boil down to this: Lawmakers disagree to what extent the NCAA should be granted cover, such as antitrust exemption, to ward off lawsuits by, you know, athletes. Meanwhile, these hearings have the tone of a benevolent father discussing a limited allowance with an adolescent. “How much do you think you earned for washing my car, Joey?” Those scheduled to appear Wednesday include Gonzaga men’s basketball coach Mark Few, Howard University President Wayne A.I. Frederick, ESPN’s Rod Gilmore and two law school professors who study NCAA issues. One of them is Matthew J. Mitten, a distinguished gent from Marquette Law who writes papers with names such as “A Regulatory Solution to Better Promote the Educational Values and Economic Sustainability of Intercollegiate Athletics” and who has advocated for NCAA antitrust exemption because it is “a unique joint venture among institutions of higher education.” Since when does a venture’s uniqueness justify its illegality? This is a witness list outrageously stacked with pro-NCAA advocates, from Few — an institutionalist who has suggested politicians stay in their lane and leave the NCAA to solve its problems — to Emmert, who a full decade ago convened a “summit” to discuss issues plaguing college athletics and neglected to invite a single athlete. Only occasionally do lawmakers hear athletes’ personal accounts — usually privately. Sedona Prince, a basketball player at Oregon, has spoken with legislators and will offer testimony to the Commerce committee, but it will be in writing. If she were allowed to speak publicly along with Emmert, this is what she would say: As a freshman at Texas, she badly broke her tibia and fibula. After multiple surgeries, she transferred to Oregon, where she struggled to pay medical bills in the tens of thousands of dollars, while the NCAA denied her so much as a GoFundMe campaign. “I just think it’s outrageous that the NCAA continues to treat us like children and takes away our rights in the name of somehow ‘protecting us,’ ” Prince has said. Her written testimony will contain this plea: “No legislation should sacrifice college athletes’ rights and freedoms to protect the NCAA’s bank account.” There is a business term called “input bias,” and Congress is suffering from it. It has heard from far too many chancellors, vice chancellors, law professors, athletic directors and commissioners parading to Capitol Hill in a quest to protect their institutional income. Input bias, a term coined by Wharton business professor Maurice Schweitzer, is what happens when information is used or misused to form false impressions that lead to flawed conclusions. Example: Exorbitant spending on research and development is not really a measure of innovation. A longer stay in a hospital does not mean better care. Just because you work in the office later doesn’t mean your work is better. And a flood of testimony from institutional representatives does not yield the best advice on how to reform institutions. In fact, this litany of “institutional” testimony skews the issues. Example: If an Ohio State football player cuts a Campbell’s Soup commercial, should he have to disclose that money to the school’s athletic department and the NCAA, and should they have veto power over it? But the answer cannot come from the institutions. It can only come from looking at the personal. Does a talented scholarship cellist have to tell a dean if he made money playing a gig? When Yo-Yo Ma was at Harvard, did he have to let the school decide whom he could play for, and for how much? Of course not. When Natalie Portman was at Harvard, did she have to disclose when she got a movie deal or what she was paid for a Star Wars role? No, because those would have been outrageous abuses; the school simply had no right. So why on Earth should the NCAA be permitted to tell Sedona Prince that she can’t have an Instagram sponsor on the 240,000-follower account she built by herself? This is how far off course the “institutional” undertow has pulled us — until congressional committees and hearings are completely upside down. Why is Congress so preoccupied with protecting the NCAA from Sedona Prince, rather than protecting Sedona Prince from the NCAA? There are a lot of messages in that witness list, but the primary one is this: Congressional lawmakers are nowhere near granting college athletes their full rights. They haven’t even granted them a full voice.

#### That causes FTC wing-clipping

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The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC. Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start: The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129 B. The Posner Dissent Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2 Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33 But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks. III. SOME LESSONS AND A FEW MODEST SUGGESTIONS People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13 Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140 A. Be Careful What You Demand (Or Wish For) The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended. In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144 The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission. B. Leadership Incentives Matter Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150 But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice: It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS] Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives. C. Don't Forget About Politics Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54 Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6