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T-Per Se

**Only per se illegality is a prohibition.**

**Seita and Tamura 94** (Alex Y. Seita, Professor of Law, Albany Law School of Union University. B.S. 1973, California Institute of Technology; J.D. 1976, M.B.A. 1980, Stanford University, & Jiro Tamura, Associate Professor of Law, Keio University. B.A. 1981, M.A. 1983, Keio University; LL.M. 1985, Harvard University, [“The Historical Background of Japan's Antimonopoly Law,” 1994 U. Ill. L. Rev. 115, 177-178](https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WD60-00CW-508X-00000-00?page=177&reporter=8130&cite=1994%20U.%20Ill.%20L.%20Rev.%20115&context=1516831))

Upon the elimination of the restriction on undue substantial disparities in bargaining power, for example, economic concentration of power in and of itself was no longer a problem for business. The elimination of the prohibition against certain concerted activities meant that cartel behavior was no longer illegal per se. Most significantly, the authorization of depression and rationalization cartels under the Antimonopoly Law, with JFTC permission, legalized cartels under certain conditions. 418 Thus the rule of reason, rather than per se illegality, now governed cartel behavior. 419

#### The rule of reason is not a prohibition.

Skoczny 01 – Professor of law, Holder of the Jean Monnet Chair on European Economic Law at the Warsaw University Faculty of Management

Tadeusz Skoczny, “Polish Competition Law in the 1990s - on the Way to Higher Effectiveness and Deeper Conformity with EC Competition Rules,” European Business Organization Law Review, Vol. 2, Issue 3-4, September 2001, LexisNexis

Most importantly, the new Act departed from the relativity of the prohibition of dominant position abuses; as in Article 82 EC Treaty, it is now a general prohibition which does not allow for exemptions on the basis of a rule of reason. Also new is the prohibition of the abuse of dominant position by groups of undertakings, which will allow to effectively control the state and the development of competition on oligopolistic markets. The Act also eliminated the distinction between monopolistic and dominant position; in theory and in practice, it was difficult to justify the maintenance of this distinction. Therefore, the Act relates only to a dominant position, the definition of which however has been changed. According to the new Article 4 point 9, dominant position means a position "which allows [the undertaking] to prevent effective competition on the relevant market thus enabling [the undertaking] to act to a significant degree independently from its competitors, contracting parties and consumers". It is easy to notice that this definition is based on the United Brands and Hoffmann La-Roche standards. It must nevertheless be emphasised that such understanding of dominance was introduced by the AMC already in 1993; it considered dominance as the capacity to act "to a large extent independently of the competitors and clients, thus also the consumers". Thanks to the AMC's judgements also the relevant product and geographical markets are defined on the basis of the criteria of "close commodity substitutability" and "homogenous competition conditions".

#### Vote neg---limits and ground---rule of reason exemptions zero topic DAs and explode the topic to any law review. Per se is the only shot at unique links.

### OFF

T-Subsets

#### “The” refers to the entire group as a whole

Kentucky Supreme Court 3 (Opinion in Kotila v. Com., 114 SW 3d 226 - Ky: Supreme Court 2003. Google scholar caselaw, date accessed 9/26/21)

Whether a conviction under this statute requires possession of all (as opposed to any) of the chemicals or equipment necessary to manufacture methamphetamine under some manufacturing process is a matter of statutory construction. First, we examine the language of the statute, itself. United States v. Health Possibilities, P.S.C., 207 F.3d 335, 338-39 (6th Cir.2000) ("The starting point in a statutory interpretation case is the language of the statute itself."). Obviously, the multiple manufacturing methods and the availability of a broad range of readily available chemicals and equipment necessary for each manufacturing process militates against itemizing within the statute all of the possible chemical and equipment combinations by which methamphetamine could be manufactured. Nevertheless, KRS 218A.1432(1)(b) does not read "[p]ossesses chemicals or equipment," or "[p]ossesses some of the chemicals or equipment," or "[p]ossesses any of the chemicals or equipment." It reads "[p]ossesses the chemicals or equipment for the manufacture of methamphetamine." The presence of the article "the" is significant because, grammatically speaking, possession of some but not all of the chemicals or equipment does not satisfy the statutory language. "The" is "[u]sed as a function word before a plural noun denoting a group to indicate reference to the group as a whole." Webster's Third New International Dictionary 2369 (1993).

In decisions spanning three different centuries, the appellate courts of this Commonwealth have found use of the word "the" to have a significant effect upon meaning. See Revenue Cabinet v. Hubbard, Ky., 37 S.W.3d 717, 719-20 (2000) ("[U]se of the definite article `the' indicates that the statute refers to the entire body and not to discrete parts or components ...."); Cardwell v. Haycraft, Ky., 268 S.W.2d 916, 918 (1954) (the trial court's contributory negligence instruction was erroneous in that it contained the definite article "the" before the words "proximate cause" and "such language indicates that `the sole' rather than `a contributing' cause was meant."); Schardein v. Harrison, 230 Ky. 1, 18 S.W.2d 316, 319 (1929) ("[I]f the makers of the Constitution had intended to qualify the word `office' [in Ky. Const. § 161] they would have inserted the definite article `the' before `office.'") (quotation omitted); Sheriff of Fayette v. Buckner, 11 Ky. (1 Litt.) 126, 128 (1822) (holding that legislative act referencing "the clerk of the court" intended a particular clerk of court referenced elsewhere in the legislation). For similar interpretations by other jurisdictions, see, e.g., State Farm Fire & Cas. Co. v. Old Republic Ins. Co., 466 Mich. 142, 644 N.W.2d 715, 718 (2002); Patricca v. Zoning Bd. of Adjustment, 527 Pa. 267, 590 A.2d 744, 751 (1991); McClanahan v. Woodward Constr. Co., 77 Wyo. 362, 316 P.2d 337, 341-42 (1957); Williams v. McComb, 38 N.C. (3 Ired. Eq.) 450 (1844) ("[G]rammatically speaking, `The,' is a definite article before nouns, which are specific or understood, and is used to limit or determine their extent."). We are directed by the General Assembly to construe our statutes "according to the common and approved usage of language." KRS 446.080(4). Following that directive, we construe "the chemicals or equipment" to mean all of the chemicals or all of the equipment necessary to manufacture methamphetamine.

#### The ‘private sector’ means all non-government entities.

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1> , date accessed 9/10/21)

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

#### Violation---the aff doesn’t prohibit a practice done by all non-government entities.

#### Vote neg---limits and ground---subsets aren’t controversial and explode the topic.

### OFF

Agencies DA

#### Antitrust 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 requires an unexpected, significant and drawn-out expenditure of finite law enforcement resources

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.

#### Resources are finite and are drawn from under-the-radar priorities

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### 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.

### OFF

Judicial Efficiency DA

#### Antitrust cases are uniquely complex and time consuming. The plan clogs federal dockets.

Keith Holleran 20, JD from GMU School of Law, 2020, “Establishing an Independent Antitrust Court,” https://awards.concurrences.com/IMG/pdf/4.\_establishing\_an\_independent\_antitrust\_court.pdf?56466/614536766da09a9216d1e0809972eb9aa909eb4d

The Antitrust Court would be more efficient than generalist courts simply because the Antitrust Court is made up of experts in antitrust law. “Judges who regularly handle a single class of cases are expected to dispose of their work in less time than their counterparts on generalist courts who see that class of cases less frequently.”5 Antitrust Court judges are made up of experts in the field, and so they would require much less preliminary research to get brought up to speed on a given case. Generalist judges may not see many antitrust cases each year, and so they would have to research antitrust law and gain an understanding of what needs to be resolved and proven in every case. As antitrust cases often involve highly complex economic models and arguments, more and more is required of generalist judges to make an accurate decision. An ancillary gain in efficiency is realized from generalist courts no longer having to work through complicated antitrust cases, as they are now brought before a specialized court.6 Antitrust cases can take years to resolve, and these cases can clog up a generalist court’s docket. “It is now generally accepted that the regular federal courts, and especially the courts of appeals, are critically overloaded.”7 Removing all of these cases to a specialized court frees up generalist judges to resolve other cases quicker.8

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

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

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

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The United States federal government should increase non-antitrust regulatory prohibitions on private sector conduct that results in competition-related harms to privacy.

#### Solves, competes, and avoids the court and agency DAs.

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

A. Antitrust and Regulation as Policy Alternatives A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incen- tives and discipline necessary to keep prices low, output high, and innovation moving forward.8 But sometimes market forces alone cannot ensure efficiency and economic welfare—for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, in- novation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which “antitrust may help maintain com- petition.”9 Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through “skill, foresight and industry.”10 Thus, competition authorities like the FTC and the DOJ’s Antitrust Division review mergers, inves- tigate single-firm conduct, and prosecute collusion.11 Private plaintiffs can pur- sue civil antitrust liability through suits in the federal courts.12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm’s activity is “substantially to lessen competition, or to tend to create a monopoly,”13 or to constitute a “contract, combination, . . . or conspir- acy” in restraint of trade,14 or to “monopolize, or attempt to monopolize” any line of business.15 Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure—and Congress has often done so. With such statutory authority, “[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles.”16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers.17 The 1992 Cable Act gave the FCC authority to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry’s market structure.18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecom- munications industry. More recently, the FCC issued,19 and then repealed, 20 “network neutrality” regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition.21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries.22 In contrast to the case-by-case approach of antitrust, regulation typically im- poses ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone com- panies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to custom- ers of competing networks.23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency’s enforcement decision is usually on the regulated party. Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures.24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act.25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has “willful[ly]” acquired or maintained other than “as a consequence of a su- perior product, business acumen, or historic accident.”26 Alternatively, with au- thority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies,27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots.28

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The 50 United States and relevant subnational entities should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws to include competition-related harms to privacy

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#### Solves and avoids all DAs.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

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#### Both bills pass soon---PC key.

Patteson 10-19-2021 (Callie, “Jayapal vows infrastructure, reconciliation bills will pass following talks,” *New York Post*, <https://nypost.com/2021/10/19/jayapal-vows-passage-of-infrastructure-reconciliation-bills/>)

Leader of the House Progressive Caucus Pramila Jayapal vowed this week that both the bipartisan infrastructure package and the massive, hotly debated reconciliation bill, otherwise known as the “human infrastructure” package, will pass in Congress — but stopped short of providing a timeline. During MSNBC’s “The Rachel Maddow Show” on Monday, Jayapal (D-Wash.) revealed it was “great to spend time” with Sen. Joe Manchin (D-WV) to discuss the bill, after the two — and several others — have gone back and forth over the price tag of the reconciliation package for weeks. The ongoing negotiations have delayed the passage of the infrastructure bill, causing frustration on both sides of the aisle. However, Jayapal, who has been leading the charge for the progressives, promised both pieces of legislation will pass. “We’re going to get them both done. We are going to get them done. It is a messy process. Democracy is not always easy. Negotiation is not always easy,” she said. “There are differences. Everybody knows there are differences. We have to bridge them, and we got to come together because, at the end of the day, we have to deliver both these bills, the infrastructure bill and Build Back Better Act, to the president’s desk.” “I have always been happy to talk to anybody. It was great to spend time with Senator Manchin today. I’m not going to get into the details of what we talked about. I think it is important for us to be talking to each other,” she added. Rep. Pramila Jayapal. Rep. Pramila Jayapal added that it is “important for us to be talking to each other” regarding infrastructure negotiations. CNN Jayapal’s comments came hours after Manchin and Sen. Bernie Sanders (I-Vt.) stood shoulder to shoulder and smiling outside the Capitol. “We’re talking,” Manchin said, a statement Sanders repeated. When asked if they would reach agreement on the final form of the bill by this weekend, Sanders again stated: “We’re talking.” Moments earlier, Sanders told reporters: “I think there is a general feeling that negotiations have been going on for month after month after month, and that it is time that we had — we brought this thing to a head as soon as we possibly can. And I would hope that we’re gonna see some real action in the next — within the next week or so.” Progressives, backed by House Speaker Nancy Pelosi (D-Calif.) and President Biden, have long pushed for the reconciliation package to cost $3.5 trillion, a number they have suggested is already a compromise. Moderates like Manchin and Sen. Kyrsten Sinema (D-Ariz.) have vowed to vote against a number that high, putting Democrats in a bind, as they need all 50 Senate votes to pass the budget without any Republican support through a parliamentary procedure called reconciliation. Progressive in turn have used the infrastructure package as leverage to pass the massive spending bill first. Biden made clear earlier this month that the infrastructure bill will not move without the larger measure. While Manchin has revealed he would support a top number of $1.5 trillion, Sinema has not publicly stated what her budget would be. She has, however, reportedly said she would not support the multitrillion-dollar social spending bill until the bipartisan infrastructure measure passes in Congress. “We’re going to keep having these conversations,” Jayapal added Monday. “I’m back at the White House tomorrow with some of my progressive colleagues. I know the president is also doing another meeting with some of the other centrist Democrats, but this is important. I do think it’s important that the president himself has been really engaged.”

#### Antitrust reform trades off

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Passage now is vital to success of international climate talks. That solves climate change.

Frazin 10-11-2021, analyst @ The Hill (Rachel, “Biden faces pressure to pass infrastructure bills before climate summit,” The Hill, <https://thehill.com/policy/energy-environment/575976-biden-faces-pressure-to-pass-infrastructure-bills-before-climate?rl=1>)

President Biden is facing pressure to get major infrastructure legislation across the finish line ahead of a global climate summit this month. Congress is currently working through both a bipartisan infrastructure bill that includes investments in an electric vehicle charging network and public transit and a Democrat-only “social infrastructure bill” that would spend heavily on clean energy. Summit participants are keeping a particularly close eye on the Democratic measure, which has much greater potential to deliver the kind of emissions cuts Biden has promised. Countries are expected to negotiate the future of climate action at the COP26 climate meeting in Glasgow, Scotland, where the U.S. will be working to restore its climate leadership after four years of inaction under the Trump administration. Passing the sweeping Democratic spending bill would give the U.S. more credibility and leverage in negotiations as it attempts to push other countries for more action. “It will definitely improve the hand that special envoy [John] Kerry can play at the COP negotiations in Glasgow if legislation has been passed — in fact either bill, but of course ideally both,” said Kelly Sims Gallagher, who worked on climate diplomacy in the Obama administration. “Although the Biden administration put in place a number of executive orders at the beginning of his presidency, those policies will only take the United States so far,” she said. “Legislation is really essential to be able to put the United States on track for achievement of the 2025 target and of course also the new target that President Biden announced in April for 2030.” Former President Obama committed the U.S. to reducing its emissions 26 to 28 percent by 2025 compared to 2005 levels. President Biden in April said he hoped the U.S. would cut its emissions to 50 to 52 percent of the 2005 level by 2030. As of 2019, U.S. emissions were down 12 percent from 2005 levels, and then dropped almost 10 percent in a single year during the COVID-19 pandemic. However, the International Energy Agency has warned of a spike in global emissions this year as economies look to rebound. Democrats are saying the infrastructure bills will help reach Biden’s more ambitious goals. In an August “Dear Colleague” letter, Senate Majority Leader Charles Schumer (D-N.Y.) said the legislation would bring the U.S. on track to cut its emissions by about 45 percent below 2005 levels by 2030 — and with other executive and state actions, that number would reach 50 percent. A version of the Democrats' bill put forward in the House has a number of climate provisions, including clean energy tax credits, a fee on methane emissions from the oil and gas industry, and a program that would seek to shift the bulk of the country’s electric power to renewable energy through payments and fines to power providers. But the size, scope and timeline of the bill — currently carrying a $3.5 trillion price tag — are being cast in doubt amid qualms from conservative Democrats. Sen. Joe Manchin (D-W.Va.) has not only raised issues with the size of the bill but also with some of its climate provisions, particularly the electricity program. Nevertheless, forces both inside and outside Congress have said they hope to have a deal across the finish line as the U.S. seeks to restore its climate credibility on the world stage in the coming weeks. “Glasgow is a matter of weeks away. We want the president to be able to go there with a plan to meet our emissions promises and standards,” House Speaker Nancy Pelosi (D-Calif.) said late last month. Climate hawk Sen. Ed Markey (D-Mass.) echoed those comments in a press conference with colleagues and climate activists outside the Capitol. “We must act in Congress before Joe Biden goes to meet with the rest of the world,” he said. Asked recently whether it was important for U.S. lawmakers to get the bill done before the conference, COP26 President Alok Sharma told reporters that “being able to show progress domestically is, of course ... going to be important in terms of them encouraging others to do the same.” Others argue that it’s particularly important to deliver tangential progress after the U.S. lost credibility on climate during the Trump administration — notably with his withdrawal from the Paris agreement, which was born out of a previous global climate conference. “The experience of seeing President Trump walk away from the Paris agreement has countries understandably nervous about the long-term reliability of the United States,” said Jennifer Haverkamp, a climate negotiator during the Obama administration. Haverkamp, now a professor at the University of Michigan, said that the U.S. not getting the legislation done in time could make it harder for other countries to justify their own climate actions. “The negotiators from other countries are pretty sophisticated and make themselves students of the U.S. legislative process,” she said. “But for them to have the political backing of their governments and the support of their public, it’s harder to explain if they don’t have something concrete to point to from the United States.” And Gallagher, who is now a professor at Tufts’s Fletcher School, noted that the U.S. passing its own legislation would allow American negotiators to push other countries to “hold themselves accountable to achieving the commitments that they’ve set for themselves.”

#### Warming leads to extinction---it’s a conflict-multiplier and defense doesn’t assume non-linearity

Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### OFF

Horse-trading DA

#### The plan only passes if it’s horse-traded for censorship prohibitions.

Perera 3-12-2021, veteran cybersecurity reporter, Data security & privacy reporter for MLex (Dave, “US antitrust legislation faces uphill battle despite unified Democratic government,” <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government>)

Renewed interest among US lawmakers in antitrust legislation is unlikely to produce radical policy shifts, notwithstanding the Democratic Party’s unified control of the federal government. Democrats promised a “big, bold agenda” after they captured the Senate by a hairsbreadth in January. Democratic lawmakers may very well stick to those ambitions and announce audacious legislative proposals. But the fate of those bills is at the mercy of a political dynamic ensuring that the more liberal the policy prescriptions, the less likely they are to become law. The most likely outcome over the next two years is more funding for enforcers at the Department of Justice and Federal Trade Commission, whether directly through appropriated funds, steeper merger notification filing fees, or both. It’s also possible Congress could incrementally tinker along the edges of antitrust. It might lower the threshold for challenging mergers, or mandate data portability requirements for social media companies. Those expecting — or fearing — more ambitious outcomes likely won’t see them enacted. So until America’s November 2022 election, scratch from the list of high probabilities reforms such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company. Put another way, unless a bill can attract significant Republican support, not even two years of unified Democratic government can guarantee reforms. — American exceptionalism — Single party control of both congressional chambers and the presidency is relatively rare in American politics. It has occurred in fewer than a third of legislative sessions since 1980. When it strikes, it doesn’t last long — typically just the two years between one congressional election and another. Historically, unified control is a fertile period for new regulations. President George W. Bush overhauled Medicare. President Barack Obama ushered in financial sector reforms and the Affordable Care Act. Indications are that President Joe Biden is emboldened by his party’s last-minute capture of the Senate. History, of course, isn’t a blueprint. Even a brief look at past episodes of unified control reveals that not even single-party capture of the executive and legislative branches of the US government can assure the enactment of a partisan agenda. For one thing, neither political party is a monolith. Although far more politically aligned than when Democratic conservatives found common cause in the 20th century with Republicans, the major American parties nonetheless are coalitions of centrist and activist wings. For Democrats, the tensions inherent in appeasing all sides became apparent earlier this month when centrists trimmed benefits in the $1.9 trillion coronavirus stimulus package. Neither is single party grip on power secure unless it commands an overwhelming majority in the Senate, thanks to a uniquely American institution: the filibuster. In the Senate, the rules mandate a three-fifths vote before debate over a bill is cut off. In recent decades, it’s become a weapon routinely wielded by the minority party to kill legislation. The upshot is that policy legislation needs supermajority support before it can proceed, meaning the 50 Democrats of today’s Senate have little choice but to resign themselves to the grind of finding Republican supporters. There are limited exceptions. Assuming Democrats stay in unison, they don’t need Republican votes to appoint judges, approve executive branch nominations or pass fiscal legislation such as the coronavirus stimulus that just became law. It’s within Democrats’ power to abolish the filibuster, but for now, the maneuver appears safe. Asked just days ago about the matter, White House spokeswoman Jen Psaki told reporters that the president’s preference is for it to stay in place. “The president is an optimist by nature,” Psaki added. — Hunting for bipartisan consensus — Not every bill introduced in Congress, nor even every bill approved by a committee or even an entire single chamber, makes it through the process because its sponsors believe it’ll become law. There are a host of bills drafted with the intent of sending a message to industry, to independent regulators, to donors, to constituents. There are bills that lawmakers view as setting out a position to influence an ongoing policy debate. Even if it won’t become law this year, it might the next year, or the next, reintroduced and refined along the way. Telltale signs of whether a bill is a serious attempt at law are the number of cosponsors, and whether that list of names includes members of both parties in good stead with their party’s leadership. Bipartisan support is important even in the House, where Democrats have the votes to completely bypass Republicans. Because the House doesn’t have the filibuster to contend with, those with the majority of seats control the chamber. House Democrats can and do pass bills in the face of absolute House Republican opposition, but — special exceptions for fiscal bills aside — those bills are dead on arrival in the Senate. As long as the filibuster exists or Democrats lack a Senate supermajority, the House Judiciary antitrust subcommittee must court Republican support if its intention is to make new law. Finding clues of what House Democrats might seriously achieve, then, may be little more difficult than looking up the policy prescriptions House Republicans favor: giving regulators more resources, shifting the burden of proof in merger cases and boosting data portability and interoperability. A report issued by now-ranking Republican Ken Buck as a rejoinder to last year’s Democratic House Judiciary antitrust subcommittee staff report on competition in digital markets allowed that the GOP shares other Democratic concerns, including predatory pricing, monopoly leveraging and control over marketplace platforms. That conciliatory signal also came weighted, with warnings that Congress should be wary of “handing additional regulatory to agencies in an attempt to micromanage.” Instead, try instead telling enforcers they should return to first principles, the Colorado lawmaker advised. Whether Republicans and Democrats in the Senate can find common cause is an even more fraught question. Unlike its House counterpart, the Senate Judiciary subcommittee on antitrust hasn't conducted a 16-month investigation into digital monopolization. The subcommittee’s senior Republican, Utah’s Mike Lee, is prone to touting the importance of the consumer welfare standard and rails against online platforms “eager to impose the ideological censorship called for by their political benefactors.” Lee also says he’s open to working with subcommittee Chairwoman Amy Klobuchar on strengthening enforcement, adding the caveat that current antitrust laws are sufficient. Klobuchar, a Minnesota Democrat, doesn’t need Lee to get a bill through her subcommittee, but failing to find consensus with Republicans imperils her chances of making law. The prospects for her Competition and Antitrust Law Enforcement Reform Act becoming law as current written aren't good. — 'Big tech is out to get conservatives' — A looming question hanging over any bill, even one tailored to win bipartisan support, is whether it could be derailed by Republican anger at online platforms for alleged anti-conservative bias. A right-wing trope especially spread by President Donald Trump during his last year in office — the belief that platforms use their content moderation powers to silence conservatives — has mainstream acceptance in Republican circles. It’s a refrain almost obligatory for Republican lawmakers to repeat when discussing any issue related to online platforms. “Big tech is out to get conservatives,” House Judiciary Committee ranking member Jim Jordan of Ohio has said more than once. Democrats have their own share of anger at online platforms’ content-moderation practices, to be sure. They accuse online platforms of circumventing consumer protections, undermining civil rights laws and not doing enough to stymie disinformation. It’s Republicans, though, who appear the angriest, and are the more likely to insist that any legislative reform touching online platforms address content moderation, with the intention of making it harder, not easier, for online platforms to remove users, potentially imperiling a compromise measure.

#### That allows the GOP to weaponize misinformation---triggers epistemic decay and cements a perma-GOP government

Carpenter 21, contributing writer for The Nation. She received the James Aronson Award for Social Justice Journalism in 2018, and has been a finalist for the Livingston Awards and the National Awards for Education Reporting. Her writing has also appeared in Rolling Stone, Guernica, and various other publications (Zoe, “Misinformation Is Destroying Our Country. Can Anything Rein It In?,” *The Nation*, <https://www.thenation.com/article/society/right-wing-media-misinformation/>)

Natali Fierros Bock says she could feel this mass delusion calcifying in the wake of the election in Pinal County, a rural area between Phoenix and Tucson where she serves as co–executive director of the group Rural Arizona Engagement. “It feels like an existential crisis,” Bock adds. Many of the Sharpiegate claims online referred to Pinal County, and Gosar, whose district includes a portion of the area, was reportedly responsible for helping organize the January 6 “Stop the Steal” rally in Washington that resulted in the deaths of five people. Mark Finchem, a Republican who represents part of Pinal County in the statehouse, was also in Washington on January 6. The Capitol insurrection threw into relief the real-world consequences of America’s increasingly siloed media ecosystem, which is characterized on the right by an expanding web of outlets and platforms willing to entertain an alternative version of reality. Social media companies, confronted with their role in spreading misinformation, scrambled to implement reforms. But right-wing misinformation is not just a technological problem, and it is far from being fixed. Any hope that the events of January 6 might provoke a reckoning within conservative media and the Republican Party has by now evaporated. The GOP remains eager to weaponize misinformation, not only to win elections but also to advance its policy agenda. A prime example is the aggressive effort under way in a number of states to restrict access to the ballot. In Arizona, Republicans have introduced nearly two dozen bills that would make it more difficult to vote, with the big lie about election fraud as a pretext. “When you can sell somebody the idea that their elections were stolen, they’ve been violated, right? So then you need protection,” Bock says, explaining the conservative justification for the suite of new restrictions in her state. Voting rights is her organization’s “number one concern” at the moment. But Bock’s fears about political misinformation are more sweeping. Community organizing is difficult in the best of times. “But when you can’t agree on what is true and not true, when my reality doesn’t match the reality of the person I’m speaking to, it makes it more difficult to find common ground,” she says. “If we can’t agree on a common truth, if we can’t find a starting place, then how does it end?” Around the time of the 2016 election, Kate Starbird, a professor at the University of Washington who studies misinformation during crises, noticed that more and more social media users were incorporating markers of political identity into their online personas—hashtags and memes and other signifiers of their ideological alignment. In the footage from the Capitol she saw the same symbols, outfits, and flags as those she’d been watching spread in far-right communities online. “To see those caricatures come alive in this violent riot or insurrection, whatever you want to call it, was horrifying, but it was all very recognizable for me,” Starbird says. “There was a time in which we were like, ‘Oh, those are bots, those aren’t real people,’ or ‘That’s someone play-acting,’ or ‘We’re putting on our online persona and that doesn’t really reflect who we are in an offline sense.’ January 6 pretty much disabused us of that notion.” It was a particularly rude awakening for social media companies, which had long been reluctant to respond to the misinformation that flourished on their platforms, treating it as an issue of speech that could be divorced from real-world consequences. Facebook, Twitter, and other platforms had made some changes in anticipation of a contested election, announcing plans to label or remove content delegitimizing election results, for instance. Facebook blocked new campaign ads for the week leading up to the election; Twitter labeled hundreds of thousands of misleading tweets with fact-checking notes. Yet wild claims about election fraud spread virally anyway, ping-ponging from individual social media users to right-wing influencers and media. During the 2016 campaign, most public concern about misinformation centered on shadowy foreign actors posing as news sources or US citizens. This turned out to be an oversimplification, though many on the center and left offered it as an explanation for Hillary Clinton’s defeat in 2016; blaming Russian state actors alone ignored factors like sexism, missteps made by the Clinton campaign itself, and the home-grown feedback loop of right-wing media. In 2020, according to research done by Starbird and other contributors to the Election Integrity Project, those most influential in disseminating misinformation were largely verified, “blue check” social media users who were authentic, in the sense that they were who they said they were—Donald Trump, for example, and his adult sons. DONATE NOW TO POWER THE NATION. Readers like you make our independent journalism possible. Another key aspect in the creation of the big lie was what Starbird calls “participatory disinformation.” Trump was tweeting about the election being stolen from him months beforehand, but once voting got under way, “what we see is that he kind of relies on the crowd, the audiences, to create the evidence to fit the frame,” Starbird explains. Individuals posted their personal experiences online, which were shared by more influential accounts and eventually featured in media stories that placed the anecdotes within the broader narrative of a stolen election. Some of the anecdotes that fueled Sharpiegate came from people who used a felt-tip pen to vote in person, then saw online that their vote had been canceled—though the “canceled” vote actually referred to mail-in ballots that voters had requested before deciding to vote in person. “It’s a really powerful kind of propaganda, because the people that were helping to create these narratives really did think they were experiencing fraud,” Starbird says. Action by content moderators usually came too late and was complicated by the fact that many claims of disenfranchisement by individual users were difficult to verify or disprove. The Capitol riot led the tech giants to take more aggressive action against Trump and other peddlers of misinformation. Twitter and Facebook kicked Trump off their platforms and shut down tens of thousands of accounts and pages. Facebook clamped down on some of its groups, which the company’s own data scientists had previously warned were incubating misinformation and “enthusiastic calls for violence,” according to an internal presentation. Google and Apple booted Parler, a social media site used primarily by the far right, from their app stores, and Amazon stopped hosting Parler’s data on its cloud infrastructure system, forcing it temporarily offline. But these measures were largely reactions to harm already done. “Moderation doesn’t reduce the demand for [misleading] content, and demand for that content has grown during some periods of time when the platforms weren’t moderating or weren’t addressing some of the more egregious ways their tools were abused,” says Renée DiResta, technical research manager at the Stanford Internet Observatory. Deplatforming individuals or denying service to companies that tolerate violent rhetoric, as Amazon did with Parler, can have an impact, particularly in the short term and when done at scale. It reduces the reach of influential liars and can make it more difficult for “alt-tech” apps to operate. A notorious example of deplatforming involved Alex Jones, the conspiracy theorist behind the site Infowars. Jones was kicked off Apple, Facebook, YouTube, and Spotify in 2018 for his repeated endorsement of violence. He lost nearly 2.5 million subscribers on YouTube alone, and in the three weeks after his accounts were cut off, Infowars’ daily average visits dropped from close to 1.4 million to 715,000. But Jones didn’t disappear—he migrated to Parler, Gab, and other alt-tech platforms, and he spoke at a rally in Washington the night before the Capitol attack. One outcome of unplugging Trump and other right-wing influencers has been a surge of interest in those alternative social media platforms, where more dangerous echo chambers can form and, in encrypted spaces, be more difficult to monitor. “Isn’t this just going to make the extreme communities worse? Yes,” says Ethan Zuckerman, founder of the Institute for Digital Public Infrastructure at the University of Massachusetts at Amherst. “But we’re already headed there, and at least the good news is that [extremists] aren’t going to be recruiting in these mainstream spaces.” The bad news, in Zuckerman’s view, is that the far right is now leading the effort to create new forms of online community. “The Nazis right now have an incentive to build alternative distributed media, and the rest of us are behind, because we don’t have the incentive to do it,” Zuckerman explains. He argues that a digital infrastructure that is smaller, distributed, and not-for-profit is the path to a better Internet. “And my real deep fear is that we end up ceding the design of this way of building social networks to far-right extremists, because they are the ones who need these new spaces to discuss and organize.” In March, Trump spokesman Jason Miller said on Fox that the former president was likely to return to social media this spring “with his own platform.” A more fundamental problem than Trump’s presence or absence on Twitter is the power that a single executive—Jack Dorsey, in the case of Twitter—has in making that decision. Social media companies have become so big that they have little fear of accountability in the form of competition. “To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” concluded a recent report by the staff of the Democratic members of the House Judiciary Subcommittee on Antitrust. For now, the reforms at Facebook and other companies remain largely superficial. The platforms are still based on algorithms that reward outrageous content and are still financed via the collection and sale of user data. Karen Hao of MIT Technology Review recently reported that a former Facebook AI researcher told her “his team conducted ‘study after study’ confirming the same basic idea: models that maximize engagement increase polarization.” Hao’s investigation concluded that Facebook leadership’s relentless pursuit of growth “repeatedly weakened or halted many initiatives meant to clean up misinformation on the platform.” The modest “break glass” measures Facebook took during the election in response to the swell of misinformation, which included tweaks to its ranking algorithm to emphasize news sources it considered “authoritative,” have already been reversed. Tech companies could do more, as the election-time tweaks revealed. But they still “refuse to see misinformation as a core feature of their product,” says Joan Donovan, research director for the Shorenstein Center on Media, Politics and Public Policy at Harvard University. The problem of misinformation appears so vast “because that’s exactly what the technology allows.” There are some signs of a growing appetite for regulation on Capitol Hill. Democrats have proposed reforms to Section 230 of the Communications Decency Act, which insulates tech companies from legal liability for content posted to their platforms, such as requiring more transparency about content moderation and opening platforms to lawsuits in limited circumstances when content causes real-world harm. (GOP critiques of Section 230, on the other hand, make the false argument that it allows platforms to discriminate against conservatives.) Another legislative tactic would focus on the algorithms that platforms use to amplify content, rather than on the content itself. A bill introduced by two House Democrats would make companies liable if their algorithms promote content linked to acts of violence. Democratic lawmakers are also eyeing changes to antitrust law, while several antitrust lawsuits have been filed against Facebook and Google. But litigation could take years. Even breaking up Big Tech would leave intact its predatory business model. To address this, Zuckerman and other experts have called for a tax on targeted digital advertising. Such a tax would discourage targeted advertising, and the revenue could be used to fund public-service media. Held to account? Twitter CEO Jack Dorsey testified remotely before the Senate Judiciary Committee in November 2020. (Matt York / AP) Social media plays a key role in amplifying conspiracy theories and political misinformation, but it didn’t create them. “When we think of disinformation as something that appeared [only in the Trump era], and that we used to have this agreed-upon narrative of what was true and then social platforms came into the picture and now that’s all fragmented… that makes a lot of assumptions about the idea that everyone used to agree on what was true and what was false,” says Alice E. Marwick, an assistant professor at the University of North Carolina who studies social media and society. Politicians have long leveraged misinformation, particularly racist tropes. But it’s been made particularly potent not just by social media, Marwick argues, but by the right-wing media industry that profits from lies. “The American online public sphere is a shambles because it was grafted onto a television and radio public sphere that was already deeply broken,” argue Yochai Benkler, Robert Faris, and Hal Roberts of Harvard’s Berkman Klein Center for Internet and Society in their book Network Propaganda. The collapse of local news left a vacuum that for many Americans has been filled by partisan outlets that, on the right, are characterized by blatant disregard for journalistic standards of sourcing and verification. This insulated world of right-wing outlets, which stretches from those that bill themselves as objective sources, Fox News chief among them, to talk radio and extreme sites like Infowars and The Gateway Pundit, “represents a radicalization of roughly a third of the American media system,” the authors write. The conservative movement spent decades building this apparatus to peddle lies and fear along with miracle cures and pyramid schemes, and was so successful that Fox and other far-right outlets ended up in a tight two-step with the White House. Fox chairman Rupert Murdoch maintained a close relationship with Trump, as did Sean Hannity and former Fox News copresident Bill Shine, who became White House communications director in 2018. The backlash against Fox in the wake of the election hinted at a possible dethroning of the ruler of the right’s media machine. Its farther-right rival Newsmax TV posted a higher rating than Fox for the first time ever in the month after the election, following supportive tweets from Trump, and during the week of November 9 it passed Breitbart as the most-visited conservative website. But Fox quickly regained its perch. The network backpedaled rapidly during its post-election ratings slump, firing an editor who’d defended the projection of a Biden win in Arizona and replacing news programming with opinion content. According to Media Matters, Fox News pushed the idea of a stolen election nearly 800 times in the two weeks after declaring Biden the winner. The network’s ad revenue increased 31 percent during the final quarter of 2020, while its parent company, Fox Corporation, saw a 17 percent jump in pretax profit. The far-right media ecosystem has become so powerful in part because there’s been no downside to lying. Instead, the Trump administration demonstrated that there was a market opportunity in serving up misinformation that purports to back up what people want to believe. “In this day and age, people want something that tends to affirm their views and opinions,” Newsmax CEO Chris Ruddy told The New York Times’ Ben Smith in an interview published shortly after the election. Claims of a rigged election were “great for news,” he said in another interview. Trump’s departure from the White House won’t necessarily reduce the demand for this kind of content. Since the Capitol riot, two voting-systems companies have launched an unusual effort to hold right-wing outlets and influencers accountable for some of the lies they’ve spread. Dominion Voting Systems, a major provider of voting technology, and another company called Smartmatic were the subjects of myriad outlandish claims related to election fraud, many of which were used in lawsuits filed by Trump’s campaign and were repeatedly broadcast on Fox, Newsmax TV, and OAN. Since January the companies have filed several defamation suits against Trump campaign lawyers Sidney Powell and Rudy Giuliani, MyPillow CEO Mike Lindell, and Fox News and three of its hosts. Dominion alleges that as a result of false accusations, its “founder and employees have been harassed and have received death threats, and Dominion has suffered unprecedented and irreparable harm.” The threat of legal action forced a number of media companies to issue corrections for stories about supposed election meddling that mentioned Dominion. The conservative website American Thinker published a statement admitting its stories about Dominion were “completely false and have no basis in fact” and “rel[ied] on discredited sources who have peddled debunked theories.” OAN simply deleted all of the stories about Dominion from its website without comment. These lawsuits will not dismantle the world of right-wing media, but they have prompted a more robust debate about how media and social media companies could be held liable for lies that turn lethal—and whether this type of legal action should be pursued, given the protections afforded by the First Amendment and the fact that the powerful often use libel law to bully journalists. Alternative reality: Trump supporters in Maricopa County derided Fox for reporting on election night that Biden had won the state. (Hannah McKay / Pool / Getty Images) Ethan Zuckerman has been thinking about how to build a better Internet for years, a preoccupation not unrelated to the fact that, in the 1990s, he wrote the code that created pop-up ads. (“I’m sorry. Our intentions were good,” he wrote in 2014.) Still, he believes that framing misinformation as a problem of media and technology is myopic. “It’s very hard to conclude that this is purely an informational problem,” Zuckerman says. “It’s a power problem.” The GOP is increasingly tolerant of, and even reliant on, weaponized misinformation. “We’re in a place where the Republican Party realizes that as much as 70 percent of their voters don’t believe that Biden was legitimately elected, and they are now deeply reluctant to contradict what their voters believe,” Zuckerman says. Republicans are reluctant, at least in part, because of a legitimate fear of primary challenges from the right, but also because they learned from Trump the power of using conspiracy theories to mobilize alienated voters by preying on their deep mistrust of public institutions. It’s one thing for an ordinary citizen to retweet a false claim; it’s another for elected officials to legitimize conspiracy theories. But holding the GOP to account may prove to be even harder than reforming Big Tech. The radical grass roots have been empowered by small-dollar fundraising and gerrymandering, while more moderate Republicans are retiring or leaving the party. Writer Erick Trickey argued recently in The Washington Post that what undercut a similar wave of conservative crackpot paranoia driven by the John Birch Society in the 1960s was explicit denunciation by prominent conservatives like William Buckley and Ronald Reagan as well as Republican congressional leaders. But today’s party leaders have been unwilling to excommunicate conspiracy-mongers. In the aftermath of the Capitol riot, elected officials who spread rumors that the violence was actually the result of antifascists—including Arizona’s Paul Gosar and Andy Biggs—gained notoriety, while those critical of Trump were publicly humiliated. The embrace of conspiratorial narratives has been particularly pronounced in state GOP organizations. The Texas GOP recently incorporated the QAnon slogan “We are the storm” into official publicity media, and the Oregon GOP’s executive committee endorsed the theory that the riot had been a “false flag” operation. In March, members of the Oregon GOP voted to replace its Trump-supporting chairman with a candidate even farther out on the extremist fringe. Weaponized misinformation could have a lasting impact not only on the shape of the GOP but also on public policy. Republicans are now using the big lie to try to restrict voting rights in Arizona, Georgia, and dozens of other states. As of February 19, according to the Brennan Center for Justice, lawmakers in 43 states had introduced more than 250 bills restricting access to voting, “over seven times the number of restrictive bills as compared to roughly this time last year.” In late March, Georgia Governor Brian Kemp signed a 95-page bill making it harder to vote in that state in a number of ways. Many of the far-right extremists, politicians, and media influencers who spread misinformation about the presidential election are now pushing falsehoods about Covid-19 vaccines. The rumors, which have spread on social media apps like Telegram that are frequented by QAnon adherents and militia groups, among others, range from standard anti-vax talking points to absurd claims that the vaccines are part of a secret plan hatched by Bill Gates to implant trackable microchips, or that they cause infertility or alter human DNA. Sidestepping the craziest conspiracies, prominent conservatives like Tucker Carlson and Wisconsin Senator Ron Johnson, who has become one of the GOP’s leading purveyors of misinformation, are casting doubt about vaccine safety under the pretense of “just asking questions.” Vaccine misinformation plays into the longstanding conservative effort to sow mistrust in government, and it appears to be having an effect: A third of Republicans now say they don’t want to get vaccinated. These are the true costs of misinformation: deadly riots, policy changes that could disenfranchise legitimate voters, scores of preventable deaths. These translate into financial externalities: the additional expense of securing the Capitol, additional dollars devoted to the pandemic response. More abstract but no less real are the social costs: the parents lost down QAnon rabbit holes, the erosion of factual foundations that permit productive argument. The problem with the far right’s universe of “alternative facts” is not that it’s hermetically sealed from the universe the rest of us live in. Rather, it’s that these universes cannot truly be separated. If we’ve learned anything in the past six months, it’s that epistemological distance doesn’t prevent collisions in the real world that can be lethal to individuals—and potentially ruinous for democratic systems.

#### Extinction. Outweighs and encompasses all other threats.

Roston 21, citing Bak-Coleman, PhD, postdoctoral fellow at the University of Washington Center for an Informed Public (Eric, “As Climate Change Fries the World, Social Media Is Frying Our Brains,” *Bloomberg News*, <https://www.bloomberg.com/news/articles/2021-06-29/as-climate-change-fries-the-world-social-media-is-frying-our-brains>)

Amid emergency heat, flooding, and famine, it’s even more critical that people recognize and agree at least on the big picture. And yet, as recent history has shown us time and again, they don’t. Much of that can be blamed on the pandemic of misinformation—concerning climate change, Covid-19, vaccines, and so much more— now running rampant on social media. It reminds Joseph Bak-Coleman of fish. Bak-Coleman is the lead author of a provocative new article in Proceedings of the National Academy of Sciences about scientists’ inability thus far to adequately inform policymakers about how digital technology is impeding efforts to solve climate change and other collective-behavior problems. Individual fish swimming in a school intuit each other so rapidly and clearly that they can instantaneously and in unison pivot away from whatever dangers they encounter. Insofar as that is true, they have a limited error margin for passing along bad information. “It costs energy when you get scared for no reason, and it also costs life if you don’t get scared when you should,” said Bak-Coleman, a University of Washington postdoctoral scholar with expertise in neuroscience and evolutionary biology. “Animal groups are highly tuned to do these really fantastic feats of behavior. But it’s all quite fragile.” The development of digital communications has eroded or vaporized community protections developed over millennia to ensure at least a minimally healthy flow of information, which leads to healthy decision-making. That loss, Bak-Coleman and his co-authors write, “combined with rapid distribution of falsehood, may present one of the larger threats to human well-being.” Think of it like this. If you wanted to make the most obvious statement in the world, you could do worse than: “Technology now allows people to communicate instantaneously and across great distances.” Yet if you wanted to elicit the most tortured answer in the world, you might ask something incredibly similar: “What happens when people can communicate instantaneously and across great distances?” The tension between the obvious statement and the unanswerable question—which holds within it just about all of the world’s large-scale problems, including climate change—is so great, Bak-Coleman and his colleagues propose a whole new academic discipline just to try to understand it. As physiology has medicine and climate science has emissions-mitigation and adaptation–planning, they argue, the digital-misinformation pandemic requires an applied science—or as they call it, a “crisis discipline.” The need for such a discipline is also urgent, they argue, because “given that algorithms and companies are already altering our global patterns of behavior for financial reasons, there is no safe hands-off approach.” Despite the many joys and productive uses of digital communication, it routinely conveys so many falsehoods, so quickly, that many people are left either unable to see or unwilling to fix existential dilemmas, leaving humanity overall in a precarious condition.

### OFF

#### The 1AC is based in free-market logics that uphold and save 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.

#### Extinction---try-or-die for transition

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.

#### Reject the aff and critically interrogate neoliberal discourse

Giroux 20, McMaster University Professor for Scholarship in the Public Interest and The Paulo Freire Distinguished Scholar in Critical Pedagogy (Henry, June 9th, “Racist Violence Can’t Be Separated from the Violence of Neoliberal Capitalism,” *Truthout*, <https://truthout.org/articles/racist-violence-cant-be-separated-from-the-violence-of-neoliberal-capitalism/>, Accessed 08-24-2021)

Neoliberalism and its regressive notion of individualism and individual responsibility has undermined the belief that human beings both make the world and can change it. The pandemic has ushered in a crisis that undermines that belief and opens the door for rethinking what kind of society and notion of politics will be faithful to the creation of a socialist democracy that speaks to the core values of justice, equality and solidarity. Under such circumstances, private resistance must give way to collective resistance, and personal and political rights must include economic rights. If inequality is to be defeated, the social state must replace the corporate state and social rights must be guaranteed for all. There can be no adequate struggle for economic justice and social equality unless economic inequality on a global level is addressed along with a movement for climate justice, the elimination of systemic racism and a halt to the spiraling militarism that has resulted in endless wars. This can only take place if the anti-democratic ideology of neoliberalism, with its collapse of the public into the private and its institutional structures of domination, are fully addressed and discredited. Étienne Balibar is right in stating that the triumph of neoliberalism has resulted in the “death zones of humanity.” Following Balibar, what must be made clear is that neoliberal capitalism is itself a pandemic and a dangerous harbinger of an updated fascist politics.

Overcoming Pandemic Pedagogy

The kind of societies that will emerge after the pandemic is up for grabs. In some cases, the crisis will give way to authoritarian regimes such as Chile, Hungary and Turkey, all of which have used the urgency of COVID-19 as an excuse to impose more state control and surveillance, squelch dissent, eliminate civil liberties and concentrate power in the hands of an authoritarian political class. As is well documented, history in a time of crisis also has the potential to change dominant ideologies, rethink the meaning of governance, and enlarge the sphere of justice and equality through a vision that fights for a more generous and inclusive politics. It is crucial to rethink the project of politics in order to imagine forms of resistance that are collective, inclusive and global, capable of producing new democratic arrangements for social life, more radical values and a “global economy which will no longer be at the mercy of market mechanisms.” This is a politics that must move beyond siloed identities and fractured political factions in order to build transnational solidarities in the service of an alternative radically democratic society. Making the pedagogical more political means challenging those forms of pandemic pedagogy that turn politics into theater, a favorite tactic of Trump. In this case, the performance works to suspend disbelief, hold power accountable and unravel one’s sense of critical agency. Pandemic pedagogy does more than undermine critical thinking and informed judgments, it dissolves the line between the truth and lies, fantasy and reality, and in doing so, destroys the foundation for understanding, engaging and promoting that social and economic justice. The endgame under the rubric of a pandemic pedagogy is not simply the destruction of the truth, but the elimination of democracy itself. Central to developing an alternative democratic vision is development of a language that refuses to look away and be commodified. Such a language should be able to break through the continuity and consensus of common sense and appeals to the natural order of things. At stake here is the need to reclaim both critical and redemptive elements of a radical democracy in order to address the full spectrum of violence that structures institutions and everyday life in the United States. This is a language connected to the acquisition of civic literacy, and it demands a different regime of desires and identifications to enable us to move from “shock and stunned silence toward a coherent visceral speech, one as strong as the force that is charging at us.” Of course, there is more at stake here than a struggle over meaning; there is also the struggle over power, over the need to create a formative culture that will produce informed critical agents who will fight for and contribute to a broad social movement that will translate meaning into a fierce struggle for economic, political and social justice. Agency in this sense must be connected to a notion of possibility and education in the service of radical change. Reimagining the future only becomes meaningful when it is rooted in a fierce struggle against the horrors and totalitarian practices of a pandemic pedagogy that falsely claims that it exists outside of history. Václav Havel, the late Czech political dissident-turned-politician, once argued that politics follows culture, by which he meant that changing consciousness is the first step toward building mass movements of resistance. What is crucial here in the age of multiple crises is a thorough grasp of the notion that critical and engaged forms of agency are a product of emancipatory education. Moreover, at the heart of any viable notion of politics is the recognition that politics begins with attempts to change the way people think, act and feel with respect to both how they view themselves and their relations to others. There is more to agency than the neoliberal emphasis on the “empire of the self,” with its unchecked belief in the virtues of a form of self-interest that despises the bonds of sociality, solidarity and community. The U.S. is in the midst of a political and pedagogical crisis. This is a crisis defined not only by a brutalizing racism and massive inequality, but also a constitutional crisis produced by a growing authoritarianism that has been in the making for some time. The recent attacks by the police on journalists, peaceful protesters and even elderly people marching for racial justice echoes the violence of the Brownshirts in the 1930s. Let’s stop the futile debate about whether or not the U.S. is in the midst of a fascist state and shift the register to the more serious question of how to resist it and restore a semblance of real democracy. Under such circumstances, education should be viewed as central to politics, and it plays a crucial role in producing informed judgments, actions, morality and social responsibility at the forefront not only of agency, but politics itself. In this scenario, truth and politics mutually inform each other to erupt in a pedagogical awakening at the moment when the rules are broken. Taking risks becomes a necessity, self-reflection narrates its capacity for critically engaged agency and thinking the impossible is not an option, but a necessity. Without an informed and educated citizenry, democracy can lead to tyranny, even fascism. Trump represents the malignant presence of a fascism that never dies and is ready to remerge at different times in different context in sometimes not-so-recognizable forms. The COVID-19 crisis and the pandemic of inequality and racism have revealed elements of a fascist politics that are more than abstractions. The struggle against a fascist politics is now visible in the rebellions taking place across the United States. While there are no political guarantees for a victory, there is a new sense that the future can be changed in the image of a just and sustainable society. There is a new energy for reform taking place in the aftermath of the killing of George Floyd. Massive protests for racial, economic and social justice are emerging all over the globe. As I have argued in The Terror of the Unforeseen, at stake here is the need for these protests to transition from a pedagogical moment and collective outburst of moral anger to a progressive international movement that is well organized and unified. Such a movement must build solidarity among different groups, imagine new forms of social life, make the impossible possible, and produce a revolutionary project in defense of equality, social justice and popular sovereignty. The racial, class, ecological and public health crisis facing the globe can only be understood as part of a comprehensive crisis of the totality. Immediate solutions such as defunding the police and improving community services are important, but they do not deal with the larger issue of eliminating a neoliberal system structured in massive racial and economic inequalities. David Harvey is right in arguing that the “immediate task is nothing more nor less than the self-conscious construction of a new political framework for approaching the question of inequality, through a deep and profound critique of our economic and social system.” This is a crisis in which different threads of oppression must be understood as part of the general crisis of capitalism. The various protests now evolving internationally at the popular level offer the promise of new global anti-fascist and anti-capitalist movements. In the current moment, democracy may be under a severe threat and appear frighteningly vulnerable, but with young people and others rising up across the globe — inspired, energized and marching in the streets — the future of a radical democracy is waiting to breathe again.

## Ad 1

#### Privacy impact is fake—their ev is a random metaphor about animals—no chance they go for it

### 1NC---!D---Superintelligence

#### No superintelligence---too far off, technical complexities overwhelm.

Geist 15, MacArthur Nuclear Security Fellow at Stanford University's Center for International Security and Cooperation (CISAC). Previously a Stanton Nuclear Security Fellow at the RAND Corporation, he received his doctorate in history from the University of North Carolina in 2013. (Edward Moore, 8-9-2015, "Is artificial intelligence really an existential threat to humanity?", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2015/08/is-artificial-intelligence-really-an-existential-threat-to-humanity/)

Convinced that sufficient “intelligence” can overcome almost any obstacle, Bostrom acknowledges few limits on what artificial intelligences might accomplish. Engineering realities rarely enter into Bostrom’s analysis, and those that do contradict the thrust of his argument. He admits that the theoretically optimal intelligence, a “perfect Bayesian agent that makes probabilistically optimal use of available information,” will forever remain “unattainable because it is too computationally demanding to be implemented in any physical computer.” Yet Bostrom’s postulated “superintelligences” seem uncomfortably close to this ideal. The author offers few hints of how machine superintelligences would circumvent the computational barriers that render the perfect Bayesian agent impossible, other than promises that the advantages of artificial components relative to human brains will somehow save the day. But over the course of 60 years of attempts to create thinking machines, AI researchers have come to the realization that there is far more to intelligence than simply deploying a faster mechanical alternative to neurons. In fact, the history of artificial intelligence suggests that Bostrom’s “superintelligence” is a practical impossibility.

### 1NC— Misinfo !D

#### ‘Truth decay’ is nonsense

Dr. Steven Pinker 19, Johnstone Professor of Psychology at Harvard University, “Why We Are Not Living in a Post‑Truth Era”, https://www.skeptic.com/reading\_room/steven-pinker-on-why-we-are-not-living-in-a-post-truth-era/

Anyone who urges universities to live up to their mission of promoting knowledge, truth, and reason is bound to be confronted with the objection that these aspirations are just so 20th century. Aren’t we living in a post-truth era? Haven’t cognitive psychologists shown that humans are fundamentally irrational? Mustn’t we acknowledge that the pursuit of disinterested reason and objective truth are Enlightenment anachronisms?

The answer to all of these questions is “no.”

First, we are not living in a post-truth era. Why not? Consider the statement “We are living in a post-truth era.” Is it true? If so, it cannot be true.

Likewise, it is not the case that humans are irrational. Consider the statement, “Humans are irrational.” Is that statement rational? If it is, it cannot be true—at least, if it is uttered and understood by humans. (It would be another thing if it was an observation exchanged among an advanced race of space aliens.) If humans were truly irrational, who specified the benchmark of rationality against which humans don’t measure up? How did they conduct the comparison? Why should we believe them? Indeed, how could we understand them?

In his book The Last Word, the philosopher Thomas Nagel showed that truth, objectivity, and reason are not negotiable.2 As soon as you start making a case against them, you are making a case, which means you are implicitly committed to reason. Nagel calls this argument Cartesian, after Descartes’ famous argument that just as the very fact that one is pondering one’s existence shows that one must exist, the very fact that one is examining the validity of reason shows that one is committed to reason. A corollary is that we don’t defend or justify or believe in reason, and we certainly do not, as it is sometimes claimed, have faith in reason. As Nagel puts it, each of these is “one thought too many.” We don’t believe in reason; we use reason.

This may sound like logic-chopping, but it’s built into the way we make everyday arguments. As long as you’re not bribing or threatening your listeners to mouth agreement with you, but trying to persuade them that you’re right—that they should believe you, that you’re not lying, or full of crap— then you have conceded the primacy of reason. As soon as you try to argue that we should believe things by any route other than reason, you’ve lost the argument, because you’ve appealed to reason. That is why a defense of reason is unnecessary, perhaps even impossible.

As for the “post-truth era,” journalists should retire this cliché unless they can keep up a tone of scathing irony. It comes from the observation that some politicians—one in particular—lies a lot. But politicians have always lied. They say that in war, truth is the first casualty, and that can be true of political war as well. (The expression “credibility gap” had its heyday during the administration of Lyndon Johnson in the 1960s.) And the bending or inverting of truth by people in power has long been consequential, leading, for example, to the Spanish-American war, the First World War, the Vietnam War, and the Iraq War, right up to the near miss in the Persian Gulf in 2019.

Another inspiration for the post-truth cliché is the recent prominence of “fake news.” But this, too, is not a new development. The title of the James Cortada and William Aspray’s forthcoming Fake News Nation: The Long History of Lies and Misinterpretations in America, is self-explanatory, though the long history is by no means confined to America.3 The Protocols of the Elders of Zion, the hoaxed proceedings of a secret meeting of Jews plotting global domination, was advanced as fact by a number of prominent people in subsequent decades, including the industrialist Henry Ford. Countless pogroms, lynchings, and deadly ethnic riots have been sparked by rumors of the alleged perfidy of some minority group.

And the belief that fake news is displacing the truth itself needs to be examined for its truth. In their analysis of fake news in the 2016 American presidential election, Andrew Guess, Brendan Nyhan, and Jason Reifler found that it took up a minuscule proportion of the online communications (far less than 1 percent) and was mainly directed at partisans who were impervious to persuasion.4 This is hardly surprising: unless you were already marinated in a rightwing fever swamp, if you came across a social media post claiming that Hillary Clinton was running a child sex ring out of a Washington DC pizzeria, you would treat it as exactly what it is.

## Ad2

### 1NC---!D---Nuclear Terrorism

#### No nuclear terrorism.

Ward 18, analyst on the Defence, Security, and Infrastructure team at RAND Europe. Citing Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House. (Antonia, 7/27/18, "Is Nuclear Terrorism Distracting Attention from More Realistic Threats?", *RAND*, https://www.rand.org/blog/2018/07/is-the-threat-of-nuclear-terrorism-distracting-attention.html)

Despite Obama's remarks in 2016 and these two incidents, experts and officials contest the viability of the nuclear terrorism threat. Dr Beyza Unal, a research fellow in nuclear policy at think tank Chatham House, argued there is currently no evidence that terrorist groups could build a nuclear weapon. Similarly, a report by the Council on Foreign Relations in 2006 emphasized how building a nuclear bomb is a difficult task for states, let alone terrorists. This is because of the issues involved in accessing uranium and creating and maintaining it at the correct grade (enriched uranium).

While nuclear terrorism is a concern, the majority of terrorist attacks are conducted with conventional explosives. The 2017 Europol Terrorism Situation and Trend Report states that 40 percent of terrorist attacks used explosives. These explosives originate from a wide variety of countries across the world. According to a study by Conflict Armament Research, large quantities of explosive precursor chemicals used to make bombs as seen in the 7/7 attack in London in 2005 and the 2017 Manchester Arena attack, have been linked to supply chains in the United States, Europe, and Asia via Turkey. The threat from the spread of chemical precursors prompted the EU to begin looking at ways to tighten the regulations of these chemicals (PDF).

A nuclear terrorist attack would have grave consequences, but it is currently not a realistic or viable threat given that it would require a level of sophistication from terrorists that has not yet been witnessed. The recent focus of terrorist groups has been on simplistic strikes, such as knife and vehicular attacks. If countries are concerned about nuclear terrorism, the best way to mitigate this risk could be to tighten security at civilian and government nuclear sites. But governments would be better off focusing their efforts on combatting the spread and use of conventional weapons.

### 1NC---UQ---Terrorism

#### No terrorist resurgence---COVID checks.

Davis 20, president of Insight Threat Intelligence, an international consultant on counterterrorism and intelligence, a former senior strategic analyst with the Canadian Security Intelligence Service. (Jessica, 4/28/20, "Terrorism During a Pandemic: Assessing the Threat and Balancing the Hype", *Just Security*, https://www.justsecurity.org/69895/terrorism-during-a-pandemic-assessing-the-threat-and-balancing-the-hype/)

The COVID-19 pandemic also creates mitigating conditions for the terrorist threat in much of the world. Around the globe, people are implementing physical distancing measures and, therefore, removing a significant terrorist target: crowds. Physical distancing measures make tactics such as vehicle rammings, stabbings, and bombings far less effective. Without the crowds that usually allow these relatively simple attacks to generate casualties, terrorists may determine that their plans are best perpetrated once physical distancing measures are no longer in place.

While it may be convenient to think of terrorists as relatively omnipotent, my work in counter-terrorism has demonstrated that this is far from the case. Terrorists, like everybody else, can and do get sick, as do their family and friends, creating a burden on care. At the same time, the economic devastation caused by the virus has likely left many would-be terrorists without a source of income. They may be struggling with daily subsistence, meaning devoting additional resources (both in time and money) to attack planning and weapons/component procurements may take a back seat to more immediate needs.

The intense media focus on COVID-19 may also dissuade some would-be terrorists from engaging in attacks during the pandemic. Most terrorists seek recognition for their attacks, with the ultimate goal of sowing fear in a population. This is difficult to do if no one is paying attention to you. A recent attack in France demonstrates how little media attention some attacks are generating. Even for a COVID-19 attack (involving an infected individual), this tactic also does not guarantee media attention. The reality is that anyone we come into contact with could be a virus carrier – determining responsibility would be difficult and far from instantaneous, minimizing one of terrorism’s objectives: instilling fear. This fear would also likely be mitigated by the current environment, which is one where fear is already pervasive due to the global pandemic.

### AT organized crime

#### Illicit economies are completely inevitable

#### ---the entire dark web, and crypto markets which are immune from regulations

#### ---stolen antiques

Charney 18 - professor of art history at the American University of Rome, How the sale of stolen antiquities funds organized crime, <https://www.cnn.com/style/article/europol-illegal-antiquities-organized-crime/index.html>

The scheme was international in scope and extremely well-organized. Europol believes the base of operations was the Caltanisetta region in Sicily, where local members of an organized crime group had been illicitly excavating archaeological material, as well as producing forgeries. The agency said these goods were smuggled out of Italy, and assigned false provenances to suggest they were legally excavated and exported. They were then sold to collectors through German auction houses. Don't mess with our heritage! @\_Carabinieri\_, @metpoliceuk, @guardiacivil & the #LKA have dismantled with the support of Europol an organised crime group trafficking illegally excavated artefacts from Italy. Over 25 000 items seized worth €40 million https://t.co/S4yPyGYaS9 pic.twitter.com/zkVRzQTxAN — Europol (@Europol) July 4, 2018 Before the sting, the Carabinieri had seized around 3,000 authentic antiquities and 1,200 forgeries, and confiscated around 1,500 excavation tools and metal detectors. This is just one among many cases that speak to the spectacular growth of the looted antiquities trade. According to Edgar Tijhuis, academic director of the Association for Research into Crimes Against Art (ARCA), "looting like this has been going on for decades, but the scale of this case is unusual and among the worst cases in the last decades." Inside La Colombe d'Or, modern art's home on the French Riviera International crime syndicates first turned their attention to art crime in the early 1960s, when the Corsican Mafia was linked to a string of heists, from the burglary of the famous French Riviera restaurant La Colombe d'Or in 1960, to the theft of 118 paintings by Pablo Picasso from an exhibit at Avignon's Papal Palace in 1976. Other groups followed suit, including the Sicilian mafia, which is widely thought to have been responsible for the theft of Caravaggio's "Nativity with St. Francis and St. Lawrence" from a Palermo church in 1969. Cosa Nostra, which is widely thought to have been responsible for the theft of Caravaggio's "Nativity with St. Francis and St. Lawrence" from a Palermo church in 1969. Cosa Nostra, which is widely thought to have been responsible for the theft of Caravaggio's "Nativity with St. Francis and St. Lawrence" from a Palermo church in 1969. Credit: Heritage Images/Hulton Fine Art Collection/Heritage Images/Getty Images But while art stolen from extant collections is difficult to cash in on, illegally excavated antiquities provide a far easier way for crime syndicates to profit. These objects have never been seen by modern eyes and will not be on any stolen art databases, and can therefore be sold openly, at full value, if accompanied by a false paper trail suggesting that they were legally excavated and exported. Speaking at a 2014 ARCA conference, Paolo Giorgio Ferri, a former Italian state prosecutor who led the case against the infamous antiquities smuggler Giacomo Medici, estimated that 90% of all antiquities looting is undertaken by groups involved in organized crime as opposed to individuals or smaller groups interested in short-term profit only. Luxury lost and found: The international service aiding the war on watch theft The loss of archaeological context then becomes one among many problems, since the profits from these illicit sales go on to fund all manner of other activities in which these syndicates are involved. (It's worth noting that many terrorist groups, including ISIS, also rely on the illegal sale of art and antiquities to fund their activities.) In March 2018, Spanish police arrested two art experts who had allegedly smuggled pieces of art looted by groups affiliated with ISIS from sites in Libya, with the intention of selling them in their gallery. In March 2018, Spanish police arrested two art experts who had allegedly smuggled pieces of art looted by groups affiliated with ISIS from sites in Libya, with the intention of selling them in their gallery. Credit: Spanish National Police Schemes of the scale of the one thwarted by Operation Demetra are rare, but not as uncommon as the public might think. A raid led by Spanish police and Europol just last year, for example, recovered 41,000 stolen cultural objects, ranging from ancient Greek vases to Japanese samurai swords, in an effort that involved police from 81 countries. (While the latest Italy-led operation focused on looted antiquities sold through auction houses, last year's recovery began with police monitoring the sale of antiquities online.) What both these events underscore is that properly squashing antiquities looters who seek to profit off our shared history is not the sole responsibility of any one agency or nation. They must be dealt with in a coordinated, cross-border, international fashion.

#### ---natural resources

UN 18 - Organized crime underpins major conflicts and terrorism globally, <https://www.interpol.int/News-and-media/News/2018/N2018-103>

A new report warns that the illegal exploitation and taxation of gold, oil and other natural resources is overtaking traditional sources of threat finance, such as kidnapping for ransom and drug trafficking, which fund terrorist and militant groups. The World Atlas of Illicit Flows, compiled by INTERPOL, RHIPTO – a Norwegian UN-collaborating centre – and the Global Initiative Against Transnational Organized Crime, provides the first consolidated global overview of their significance in conflicts worldwide. Of the USD 31.5 billion in illicit flows generated annually in conflict areas, 96 per cent goes to organized criminal groups, with this money helping fuel violent conflict. Based on public reports and criminal intelligence, the World Atlas identifies more than 1,000 routes used for smuggling and other illicit flows. Exploitation of natural resources The illicit exploitation of natural/environmental resources, such as gold, minerals, diamonds, timber, oil, charcoal and wildlife, is the single-largest overall category of threat finance to conflicts today, estimated at 38 per cent share of illicit flows to armed groups in conflict. When incomes from these natural resources are combined with their illicit taxation and extortion (26 per cent) by the same non-state armed groups, the figure becomes as high as 64 per cent.

#### ---drugs, counterfeit goods, and arms sales

Kelley 12 - How Global Organized Crime Makes $870 Billion A Year, Business Insider, <https://www.businessinsider.com/how-global-organized-crime-makes-870-billion-a-year-2012-7>

Last month the United Nations Office on Drugs and Crime (UNODC) released it's World Drug Report 2012. We covered where drug use is rising, the top marijuana-using countries and the countries with the highest prevalence of cocaine-users around the world. Today the UNODC launched a new awareness campaign about global organized crime, and the video below breaks down how transnational organized crime makes about $870 billion per year. The video doesn't cover all $870 billion but does highlight major sources of illicit funding such as the trafficking of counterfeit goods ($250 billion), illegal drugs ($320 billion), illegal arms ($250 million) and humans ($32 billion).

### 1NC---!D---Cyber

#### No cyber impact.

Lewis 20, PhD, a senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies in Washington, D.C. (James Andrew, 8-17-2020, "Dismissing Cyber Catastrophe", *CSIS*, https://www.csis.org/analysis/dismissing-cyber-catastrophe)

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With ~~man-made~~ actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

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

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

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

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

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

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

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

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often?

### 1NC---!D---China War

#### **No US-China war.**

Lei 20, PhD and MA in International Politics, associate research fellow with the China Institute of International Studies. (Cui, 7-24-2020, "Despite heated talk, risk of a US-China hot war is small", *South China Morning Post*, https://www.scmp.com/comment/opinion/article/3094121/why-risk-us-china-hot-war-small-despite-heated-talk)

Many observers are pessimistic about deteriorating US-China relations and believe the two countries are heading towards a cold war. Even worse, some argue that the situation might be more dangerous than the US-Soviet Union Cold War, and that a hot war might break out between the two. This argument is unconvincing. First of all, deterrents to a flare-up are much stronger in US-China relations than in US-Soviet relations. Although economic and people-to-people ties between China and the US are declining, they are still close compared to US-Soviet ties. It is hard to decouple two closely intertwined economies and societies. Take two examples. China is expected to become the world's largest consumer market, a temptation hard to resist for exporters, including those from the US. And in education, more than 300,000 Chinese students study in the US, bringing in huge revenues for the US education industry. Many universities go to great lengths to woo international students. Recently Harvard and the Massachusetts Institute of Technology even sued the government over its new visa restrictions, now aborted, on international students. Second, even if there is decoupling, the pain would not be too great and can be kept out of the national security sphere if properly handled. In fact, for national security reasons, a modest degree of isolation will make both sides more secure and comfortable. For instance, if China’s information technology equipment cannot capture Western markets, the US will be more relaxed. If China cannot get advanced technologies from the US and its technological progress slows down, the US will be less anxious. In the same vein, China feels assured knowing that if the Trump administration does impose a travel ban on Communist Party members, it would be abandoning one of the tools available to the US to promote “peaceful evolution” in China. Economic decoupling is undeniably more painful for China than for the US. But unlike Japan during WWII, which was hit hard by the US oil embargo because of its lack of natural resources, China has no such problems. Given its large domestic market, losing the US as a major customer is not a disaster for China, and can be compensated through more dynamic economic activities at home. China can also make up for being freezed out of technological exchanges by turning to indigenous innovation. As for the US, it can import goods from other developing countries, albeit less cheaply. The relative loss is acceptable when weighed against the heightened perception of economic independence and security. Third, the ideological confrontation between China and the US is less intense than that during the Cold War. Unlike the obsession with ideology in those days, the line between capitalism and socialism is blurred today. The market economy has become universally recognised as the best way to promote economic growth and, politically, many countries have embraced democracy. Even North Korea calls itself the Democratic People’s Republic of Korea. Although ideological hawks in the US still long for the day when the beacon of freedom will light up the world, after many years of fighting bloody wars overseas, most American people are not interested in promoting democracy abroad. Meanwhile, China just wants to preserve its political system and has no interest in exporting it to other countries, as the Soviet Union did. Thus, ideological antagonism in China-US relations can easily be eased by calculations of realistic interests, which create conditions for compromise and cooperation. Fourth, both China and the US have many options other than war to achieve their policy goals. While they have no allies to serve as a buffer, given the nature of the potential conflict in the South China Sea or Taiwan Strait, both countries are adept at operating in grey zones and fighting psychological, public opinion or diplomatic warfare below the threshold of war. The forced closure of the Chinese consulate in Houston by the US government is just the latest act of brinkmanship. In addition, given China’s huge economic and financial interests in the US, the latter can wield the stick of sanctions when use of force is highly risky or not worth it. When both sides have many tools and options, why would they rush to war to achieve their goals? Last but not least, the imbalance of power will act as a deterrent. Some say the US and Soviet Union did not fight a hot war because they were evenly matched. It was not the case, actually. At the beginning of the Cold War, the Soviet Union was at a relative military disadvantage. Moreover, a country needs the will to fight before going to war, even if it is stronger militarily than its adversary. Having fought years of meaningless wars, the US is weary of war. China, too, abhors war. Having a clear understanding of US strength, especially when its own economy is slowing down and it is facing various domestic challenges, China would not wish to recklessly start a war with the US. In summary, the possibility of a hot war between China and the US is very small. The greatest danger for China is not a cold or hot confrontation with the US, but policymakers’ interpretation of the momentary hostility towards Beijing of a portion of the American population and the larger world. An erroneous interpretation could end China’s march to further opening up, and see it turn instead towards self-isolation.

# 2NC

## Regulations CP

### 2NC---Regulation CP

#### It’s byfar the most direct route to solvency.

Shughart 8, PhD in Economics, Professor in Public Choice at Utah State University (William, “Regulation and Antitrust,” in *Readings in Public Choice and Constitutional Political Economy*, Ch 25)

The stated goals of antitrust policy are much the same as those of regulatory policy. It too attempts to influence the pricing and output decisions of private business firms. But enforcement of the antitrust laws proceeds by indirect means rather than by way of the hands-on price and entry controls normally associated with public regulation. Stripped to their essentials, the antitrust laws declare private monopolies to be illegal. Law enforcement is then carried out on a number of fronts, including preventing monopolies from being created in the first place through the merger of former competitors or the orchestration of collusive agreements among them, requiring the dissolution of large firms that have attained monopoly positions in the past, and limiting the use of certain business practices thought to facilitate the acquisition or exercise of market power.

#### Courts circumvent the aff.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

#### That happens even if legislation is airtight.

Crane 21, Frederick Paul Furth, Sr. Professor of Law, University of Michigan. (Daniel A., “Antitrust Antitextualism”, 96 Notre Dame L. Rev. 1205, pg. 1207, Accessible at: https://scholarship.law.nd.edu/ndlr/vol96/iss3/7/)

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

Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that.

### 2NC---AT: Perm do CP

#### The “core antitrust laws” means Sherman, Clayton, and FTC---the counterplan doesn’t touch those.

**FTC ND**. “The Antitrust Laws.” 2013. Federal Trade Commission. June 11, 2013. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

#### More ev.

Lisa Kimmel 20, Senior Counsel at Crowell & Moring, LLP in Washington, D.C., twenty years of experience as an antitrust lawyer and holds a Ph.D. in economics from the University of California at Berkeley; and Eric Fanchiang, associate in Crowell & Moring’s Irvine, CA office and a member of the firm’s antitrust and commercial litigation groups, 2020, “Antitrust and Intellectual Property Licensing,” in 2020 Licensing Update, Wolters Kluwer Legal & Regulatory U.S., https://www.crowell.com/files/20200401-Licensing-Update-Chapter-13.pdf

U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The core federal statutes are the Sherman Act,1 passed by Congress in 1890, and the Federal Trade Commission2 and Clayton Acts,3 both passed in 1914. The United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC” or “Commission”) (together the “agencies”) share enforcement of most areas of federal antitrust law but with some differences in the scope of their authority. The FTC has sole authority to enforce Section 5 of FTC Act, which prohibits (1) unfair methods of competition and (2) unfair or deceptive acts or practices. The FTC almost always pursues claims for anticompetitive conduct as unfair methods of competition and reserves charges of unfair or deceptive acts or practices for consumer protection violations. Though the FTC's authority to challenge unfair methods of competition goes beyond conduct prohibited by the Sherman and Clayton Acts, in practice the FTC brings most unfair methods of competition cases under the same standards that courts apply to Sherman Act claims. The most prominent exception is the invitation to collude offense, which falls outside the scope of the Sherman Act (if the invitation is not accepted, there is no agreement). The FTC challenges invitations to collude as so-called “standalone” violations of Section 5.4 The DOJ has sole authority to pursue criminal violations of the antitrust laws. Most states have their own state antitrust and unfair competition statutes. State law follows federal law to some extent, though as discussed below, may differ from federal law in meaningful ways that vary state to state. State attorneys general and private parties can also typically file suit to enforce both federal and state antitrust law.

#### Consensus is neg.

Sukesh 20 (Rahul Sukesh-Fordham University. “Investigating a Mega-Merger: Contextualizing the T-Mobile Merger to the Consumer Welfare Standard and the Competition Standard“ , Fordham Undergraduate Law Review, Volume 2, Article 6, 2020, <https://research.library.fordham.edu/cgi/viewcontent.cgi?article=1040&context=fulr> , date accessed 9/4/21)

As the basis for the lawsuit and pending concern against the merger between T-Mobile and Sprint cited issues of antitrust law, having a general understanding of antitrust law will shed light on the breath of the issue. In practice today, there are three core antitrust laws: the Sherman Act of 1890, and the more recent Federal Trade Commission Act (FTCA) and Clayton Act both of 1914.226 The Sherman Act and Clayton Act are more significant to the implications of this case. In detail, the Sherman Act outlaws any attempt to restrict or monopolize trade within reasonable measure. Seemingly vague, this act applies to action that would hinder competition. Added to supplement the Sherman Act, the Clayton Act “addresses specific practices… such as mergers… the Sherman Act does not clearly prohibit” that would still hinder competition.”227

#### And

Philippon 19 (Thomas Philippon is the Max L. Heine Professor of Finance at New York University, Stern School of Business. Philippon was named one of the “top 25 economists under 45” by the IMF in 2014. He has won the 2013 Bernácer Prize for Best European Economist under 40, the 2010 Michael Brennan & BlackRock Award, the 2009 Prize for Best Young French Economist, and the 2008 Brattle Prize for the best paper in Corporate Finance. “Glossary” From the book *The Great Reversal,* <https://www.degruyter.com/document/doi/10.4159/9780674243095-020/pdf> , date accessed 9/4/21)

antitrust laws: The federal and state laws that promote competition and pre-vent monopolization. In the late nineteenth century, large companies organized as “trusts” to stifle competition. Antitrust deals mainly with mergers, cartels (price-fixing), and restrictive agreements (such as tie-ins or exclusive contracts). The three core antitrust laws in the US are the Sherman Act (1890), the Federal Trade Commission Act (1914), and the Clayton Act (1914). They are usually called competition laws or anti-monopoly laws outside of the US.

#### Legal institutions agree.

TREC 20 (Texas Real Estate Commission, “Commission Member Training Guide” <https://www.trec.texas.gov/sites/default/files/pdf-forms/Commission%20Training%20Guide%20(11.2020).pdf> , November 2020, date accessed 9/4/21)

President Theodore Roosevelt “busted” or broke up many of these trusts by enforcing the antitrust laws enacted by Congress. The three core antitrust laws enacted by Congress are:

* The Sherman Act

This the nation’s oldest antitrust law. Passed by Congress in 1890, the Sherman Act makes it illegal for competitors to make agreements with each other that would limit competition. In particular, the Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." The Supreme Court has held that the Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, a partnership agreement between two individuals may limit or restrict trade, but may not unreasonably do so and, therefore, would not be illegal under the Sherman Act. However, certain acts are considered so harmful to competition that they are almost always illegal. Examples include plain agreements or arrangements between individuals or businesses to fix prices, divide markets, or rig bids. These acts are “per se” violations of the Act, in other words no defense or justification is allowed.

* The Clayton Act

The Clayton Act was passed in 1914 and addresses specific acts not clearly prohibited under the Sherman Act. This Act prevents mergers or acquisitions that are likely to stifle competition or tend to create a monopoly.

* The Federal Trade Commission Act

Also passed in 1914, the Federal Trade Commission Act created the Federal Trade Commission and prohibits “unfair methods of competition” and “unfair or deceptive acts or practices.” The Supreme Court has said that every act that violates the Sherman Act also violates the FTC Act. Thus, the FTC can bring cases under the FTC Act for the same types of conduct or activities that violates the Sherman Act. The FTC Act also reaches other conduct harmful to competition that may not fit neatly into one of the categories of conduct prohibited under the Sherman Act. The FTC also enforces antitrust laws against states, including state licensing boards and commissions.

#### The permutation severs. Antitrust and regulation are wholly distinct approaches---that's Shelanski. Prefer it, it’s from a Professor of Law.

#### The aff requires law enforcement, the CP doesn’t.

Bovard 21, senior director of policy at the Conservative Partnership Institute. She is the co-author of Conservative: Knowing What To Keep with former Senator Jim DeMint and a member of the TAC advisory board. (Rachel, “Why Republicans Must Rethink Antitrust,” *The American Conservative*, <https://www.theamericanconservative.com/articles/why-republicans-must-rethink-antitrust/>)

Accomplishing any of this, however, requires the right to rethink its reflexive hesitance to take action. This is especially true in the area of antitrust. Too many on the right conflate antitrust enforcement with regulation, when the two are quite distinct. Antitrust is targeted law enforcement. It addresses specific acts of marketplace conduct that must be thoroughly investigated by the Department of Justice or the Federal Trade Commission, and proven before a judge, before the law is enforced. Regulation, by contrast, goes after entire sectors of the economy with a one-size-fits-all approach, and does so without necessarily concerning itself with finding clear evidence of fault.

#### This distinction is relevant for our net-benefit

Heather 19, senior vice president for international regulatory affairs and is responsible for antitrust policy at the U.S. Chamber of Commerce. (Sean, “Antitrust is not regulation. It’s law enforcement,” Roll Call, <https://www.rollcall.com/2019/07/23/antitrust-is-not-regulation-its-law-enforcement/>)

Put simply, antitrust is “not” regulation; it’s law enforcement. Antitrust fundamentally believes market forces maximize efficiency in the market to the benefit of the consumer. That’s why we use antitrust to restore market forces when a firm’s conduct prevents the market from functioning efficiently. By contrast, regulation drives specific market outcomes that extend beyond efficiency. In our democracy, the legislative process is responsible for setting regulatory priorities. For example, Congress is actively considering federal privacy legislation. The privacy debate is important, but privacy is not an antitrust matter to be decided by our antitrust agencies.

### 2NC---AT: Perm do Both

#### The counterplan is mutually exclusive

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)

For decades, courts treated antitrust enforcement like a complement to regulation that could come into play when antitrust would not conflict with regula- tory objectives. The Supreme Court held in 1963 that unless antitrust and regu- lation are in direct conflict with each other, courts should try to “reconcile[] the operation of both.”77 Consistent with that principle, the Court subsequently held in Otter Tail Power v. United States that antitrust agencies could challenge conduct even if a regulatory agency already had authority to challenge that very same conduct.78 In a later case, Gordon v. New York Stock Exchange, the Court made clear that there must be actual or potential “plain repugnancy” between antitrust and the regulatory statute for a court to bar an antitrust claim.79 The doctrinal acceptance of complementary application of antitrust and regulation allowed the DOJ to bring one of the most significant antitrust cases ever against a regulated firm: the suit that broke up the decades old AT&T “Bell System” monopoly.80 Two cases in the last fifteen years have significantly weakened the “plain re- pugnancy” standard. In 2004, the Supreme Court ruled in Verizon Communica- tions, Inc. v. Law Offices of Curtis V. Trinko, LLP that a claim under Section 2 of the Sherman Act could not proceed against Verizon for violations that were more related to the Telecommunications Act of 1996 than to the antitrust laws.81 The Court phrased the question presented in Trinko as “whether a complaint alleging breach of the incumbent’s duty under the 1996 Act to share its network with competitors states a claim under § 2 of the Sherman Act.”82 The Court found the allegation did not constitute a legitimate antitrust claim and reversed the Second Circuit.83 While that result is reasonable, the Court’s opinion goes well beyond answering the question presented and extends Trinko’s reach to claims that could be legitimate under antitrust law. The Trinko Court stated that one key factor in deciding whether to recognize an antitrust claim against a regulated firm “is the existence of a regulatory struc- ture designed to deter and remedy anticompetitive harm” because “[w]here such a structure exists, the additional benefit to competition provided by antitrust en- forcement will tend to be small.”84 That prudential consideration for precluding antitrust claims against a regulated firm has little to do with whether the plaintiff pleaded a valid antitrust claim or whether that claim could conflict with the reg- ulatory scheme. Indeed, it suggests that even when a plaintiff does plead a cog- nizable, nonconflicting antitrust claim, courts should still preclude the claim on grounds of enforcement efficiency if a regulatory structure could address the harm. This consideration marked a clear departure from Otter Tail and Gordon, which allowed antitrust intervention even where redundant to existing regulatory authority, absent “plain repugnancy” between the two. By introducing “small additional benefit” as grounds for precluding non-conflicting antitrust claims, the Court potentially undermined the long-standing doctrine favoring antitrust as a complement to regulation. The Court clearly took a skeptical view of such complementarity by finding little benefit from antitrust unless “[t]here is nothing built into the regulatory scheme which performs the antitrust func- tion.”85 The Court thereby suggests that it would displace antitrust if the regulation contains anything that addresses competition, even if it is addressed in only a limited way. Three years after Trinko, the Court decided Credit Suisse Securities (USA) LLC v. Billing. 86 The plaintiffs in Credit Suisse claimed that the defendants violated Section 1 of the Sherman Act, which prohibits “every contract, combination . . . , or conspiracy, in restraint of trade,”87 by setting securities prices through joint conduct that went beyond what securities laws allow.88 They also alleged that the defendants had violated antitrust and securities laws by impermissibly en- gaging in tying and similar activities.89 Importantly, the Court accepted as given that the securities law did, and “inevitably” would, render defendants’ conduct unlawful, so in principle there was no conflict between the antitrust claims and the regulatory statute.90 The Court nonetheless held that even where a correctly construed antitrust claim would not actually conflict with regulation, the anti- trust claim could still be barred on potential conflict grounds.91 The Court rea- soned that “only a fine, complex, detailed line separates activity that the SEC permits or encourages (for which respondents must concede antitrust immun- ity) from activity that the SEC must (and inevitably will) forbid.”92 Therefore, the Court expanded the notion of plain repugnancy to incorporate not just the genuine conflict that arises when antitrust could bar conduct that regulation might allow, but even conflict between antitrust and regulation that could arise only from judicial mistake or confusion. Credit Suisse thus went beyond prior implied immunity cases to establish a rule that blocks some claims even when they rely on legitimate antitrust principles, are consistent with securities laws, and, correctly read, would not interfere with the applicable regulatory scheme. Where the underlying conduct is similar enough to regulated conduct that a judge might confuse the two and create a conflict with regulatory authority, the Court chose to err on the side of barring antitrust claims. The effect of Trinko and Credit Suisse was to render antitrust and regulation more like substitutes and less like complements. The competitive practices, mar- ket structure, and market performance of regulated industries are thus more likely to develop without the constraints of antitrust, reflecting instead the po- tentially different requirements and prohibitions of a regulatory agency’s com- petition-related rules. With antitrust less able to act in parallel or as a comple- ment, the enforcement of competition in regulated industries will depend on the nature of the relevant rules, the agency’s commitment to enforcement, and the kinds of sanctions the agency can impose. As agencies repeal such rules or back off from actively administering them, the resulting competition enforcement gap could be greater because antitrust has been sidelined as an available supplement or complement. The doctrinal shift in the relationship between antitrust and regulation that resulted from Trinko and Credit Suisse therefore magnifies the competition enforcement consequences of strong deregulatory cycles.

### 2NC---AT: Plaintiff

#### No reason private enforcement is key---Jones.

#### Enforcement effect is identical to enacted statute.

Kathryn Watts 15, Garvey Schubert Barer Professor of Law at the University of Washington School of Law, “Rulemaking as Legislating,” The Georgetown Law Journal, Vol. 103, 2015, <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1035&context=faculty-articles>, pp. 1005-1007

When administrative agencies promulgate legislative rules,1 the rules look and feel much like congressionally enacted statutes,2 providing binding legal norms that govern nearly everything ranging from the quality of the air we breathe to the safety of the products we buy.3 Legislative agency regulations, for example, can bind courts and officers of the federal government, preempt state law, grant rights, and impose obligations enforceable by civil or criminal penalties.4 Yet despite the legally binding nature of legislative regulations, longstanding Supreme Court precedent refuses to embrace the notion that rulemaking constitutes an exercise of Article I “legislative Powers.”5 Instead, the Court insists that Congress cannot delegate its legislative powers and that rulemaking activities by administrative agencies must constitute exercises of the “executive Power” found in Article II of the Constitution.6 The Court’s most recent pronouncement to this effect came in 2013 in City of Arlington v. FCC when the Court noted that although agency rulemaking takes a “legislative form,” such rulemaking activities “are exercises of—indeed, under our constitutional structure they must be exercises of—the ‘executive Power.’”7 As the Court’s opinion in City of Arlington suggests, constitutional concerns help to explain the Court’s stubborn adherence to its longstanding view that rulemaking constitutes an incident of executive rather than legislative power. Specifically, the nondelegation doctrine insists that Congress may not delegate legislative power because Article I, Section One of the Constitution vests the legislative power in Congress, not elsewhere.8 In its modern form, the nondelegation doctrine also provides that there is no forbidden delegation of legislative power so long as Congress provides some kind of an “intelligible principle” to guide the agency in its execution of the law.9 In other words, if Congress sets forth some kind of a guiding principle—even a hopelessly vague standard like, say, regulate “in the public interest”10—then the courts declare agency rulemaking to be constitutionally permissible as an incident of executive functions.11 It is through this reading of legislative powers that the Court is able to insist that Congress may not delegate legislative powers and, at the same time, routinely rubber stamp wide-ranging delegations of rulemaking power to agencies.12

#### Accardi review permits private litigant enforcement of the counterplan.

Gillian Metzger 17, Professor of Law at Colombia University, Kevin Stack, Professor of Law at Vanderbilt University, Michigan Law Review, “Internal Administrative Law,” <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1664&context=mlr>

The external enforceability of agency’s internal law also arises in applications of the well-established Accardi principle. The Accardi principle obliges an agency to comply with its own rules.258 More specifically, it authorizes a court to invalidate agency action that does not comply with the agency’s own rules. The Accardi duty existed before the APA’s enactment and has a foundation independent of the statute, though it can also be viewed as enforcing the APA’s authorization to invalidate any agency action that is “not in accordance with law.”259 The Accardi doctrine, as Elizabeth Magill argues, provides a mechanism for agencies to make credible commitments to a self-constraining or selfregulatory policies.260 When the agency adopts policy in a legislative rule, the agency also elects to trigger external enforcement—by litigants and the judiciary—of the agency’s own compliance.261 In this way, the doctrine reinforces an agency’s capacity to entrench its policies against presidential preferences and changes in presidential administration; policy adopted through a legislative rule continues the constrain the agency until the agency amends it through a legislative rule, requiring a new round of notice and comment.262 If Accardi applies only to legislative rules, the doctrine allows an agency to deliberately trigger external judicial enforcement by issuing a legislative rule and thus to precommit itself to complying with that rule or going through notice-and-commit rulemaking to change it. But if the Accardi obligation applies to nonlegislative rules as well, the doctrine creates a cost for agencies whenever they adopt internal law: by adopting internal law, the agency creates the predicate for judicial review of its compliance.263 Purely internal law is therefore precluded.

#### Especially in the context of antitrust.

Elizabeth Magill 9, Joseph Weintraub-Bank of America Distinguished Professor of Law, Horace W. Goldsmith Research Professor, University of Virginia School of Law, 2009, “Agency Self-Regulation,” https://www.gwlr.org/wp-content/uploads/2012/08/77-4-Magill.pdf

But an act of self-regulation would limit the agency’s range of options even further than this. Instead of pursuing a series of individual enforcement actions, the agency could announce in advance what it intends to do in the future. That self-regulation could constrain the agency’s options as a substantive or procedural matter. Substantively, the agency could specify what it considers to be a deceptive trade practice. The agency could identify particular practices that it views as deceptive or, instead of identifying specific practices, it could identify the criteria by which it will decide what constitutes an unfair trade practice. The agency might also limit its options procedurally. Although no source of authority requires it, an agency might commit to conducting public hearings, guarantee the objects of an enforcement action a hearing, or endow several units of the agency with sign-off or review authority before important actions are initiated. Self-regulation, then, is a voluntarily adopted limit on an agency’s choices, and those limits can relate to the substantive meaning of a legal command or the process by which the agency will conduct its business.

B. Examples of Substantive and Procedural Self-Regulation

With this definition in mind, observers of the administrative state will agree that such self-regulatory measures pop up everywhere. Self-regulation with substantive reach is quite common. Consider just a couple of examples of agencies (voluntarily) translating general statutory standards into more rule-like commands. Many agencies have enforcement guidelines that specify how they will exercise their enforcement discretion.9 The agencies that have legal authority under the antitrust laws to approve mergers have enforcement guidelines that set forth with some specificity how they will exercise those authorities.10 Both the Federal Trade Commission and the Department of Justice have issued enforcement guidelines,11 and those guidelines have changed over time as antitrust policy has changed.12 It is worth noting that not all similarly situated agencies do that, however. The Federal Communications Commission, which also enjoys premerger authority to approve the transfer of broadcast licenses that occurs when a merger takes place, has not issued similar enforcement guidelines.13

#### The counterplan is more adaptable, flexible, and fast.

Maiorano 21, Senior Competition Expert with the Competition Division of the OECD (Frederica, “Working Party No. 2 on Competition and Regulation Competition Enforcement and Regulatory Alternatives – Note by the United States,” *OECD*, <https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2/WD(2021)12&docLanguage=En>)

Regulation can be appropriate, however, where legitimate market failures impede competitive markets.

Start FN 3

Regulation may also be justified to pursue outcomes unrelated to competition (e.g., rural access to electricity or telecommunication services).

End FN 3

In some instances, an expert regulatory agency with adequate knowledge and resources may be better suited to address durable structural concerns, e.g., by monitoring and limiting the exercise of market power or enforcing market access conditions on an ongoing basis.

Start FN 4

For example, the Federal Energy Regulatory Commission (FERC) seeks to ensure just and reasonable rates, terms, and conditions for the wholesale sale and transmission of electricity and natural gas in interstate commerce. It utilizes a range of ratemaking activities as well as market oversight and enforcement in regulating those services.

End FN 4

A regulatory authority may be able successfully to promulgate narrow, industry-specific rules to address market failures in a quasi-legislative procedure with public comments. Even where regulation is needed, however, regulators should beware of unintended consequences to ensure that regulation to address a demonstrated market failure does not unduly restrict competition.

#### Private entities lose because they lack investigative tools available to agencies.

[OECD](https://www.justice.gov/atr/file/823166/download) 15, Organization for Economic Cooperation and Development, 6/15/2015, “RELATIONSHIP BETWEEN PUBLIC AND PRIVATE ANTITRUST ENFORCEMENT -- United States” https://www.justice.gov/atr/file/823166/download

Private merger litigation is possible, but unusual. Because private plaintiffs lack the investigative tools available to the federal agencies, these cases are more difficult for them to maintain. To meet the antitrust standing requirements, private plaintiffs must allege that their injury is of the type that the antitrust laws were intended to prevent.34 For example, competitors that would be harmed by a more efficient merged firm cannot maintain a claim.35 While some private merger challenges have been launched in recent years on behalf of allegedly harmed consumers, they are often dismissed.36

#### Detterence solves this card’s warrants.

Fleisher 20, analyst @ American Economic Association (Chris, “Regulation by shaming,” <https://www.aeaweb.org/research/regulation-shaming-osha-enforcement>)

A paper in the June issue of the American Economic Review says that publicly shaming one rule breaker can have spillover effects, causing nearby peer companies to improve more than if they’d been targeted themselves. The paper offers insights into how information can be used to encourage regulatory compliance and generally deter bad behavior. “Regulators enact regulatory standards and they enforce them, but one of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there,” author Matthew Johnson said in an interview. “And that's fully in line with the mission of many of these agencies.” There are all kinds of contexts where information is used to hold companies accountable, like requiring restaurants to post hygiene cards or companies to disclose their toxic emissions. And it often works. Johnson wondered whether this “shaming” would be effective in the labor market. [O]ne of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there. The question is important not only for economists who want to know how employers respond to the threat of disclosing information, but also for public welfare and safety. There were 3.7 million work-related injuries and illnesses in 2015, costing the United States an estimated $250 billion per year. Johnson dug into data from the Occupational Safety and Health Administration, “the poster child” of under-resourced agencies, he said. OSHA’s ten regional offices routinely inspect workplaces for health and safety standards. But with just 2,000 inspectors responsible for 130 million workplaces, the agency can’t visit every site. So it’s important for OSHA to get the maximum impact from each inspection. One way is to publicize the most egregious offenders. When penalties rise above a certain threshold—$40,000 to $45,000, depending on the region—OSHA sends out a press release to local news outlets and trade publications. Spreading word of bad actors The number of news articles about OSHA violations increased after the watchdog agency created a cutoff rule for when a press release would be sent out. Penalties that exceeded $40,000 or $45,000 would be publicized. Regions 1 and 4 had adopted that cutoff rule in 2002, while other regions adopted the policy in 2009 (noted by the vertical plotline). News Articles Region 1 Region 4 Region 5 Region 6 Region 7 2002 2004 2006 2008 2010 2012 0 20 40 60 80 100 120 140 Source: author data Sending out press releases led to substantial improvements in workplace safety and health, not just at the site of the violation but also at other nearby facilities. After the shaming of one company, there were 73 percent fewer violations at other companies within a roughly three-mile radius. The threat of being outed was enough to force surrounding workplaces to make changes even though they were not actually inspected.

### 2NC---AT: Overenforcement

#### Antitrust is one-off and targeted, which precludes economy-wide changes

Wheeler 21, Visiting Fellow - Governance Studies, Center for Technology Innovation (Tom, “A focused federal agency is necessary to oversee Big Tech,” Brookings, https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/)

Oversight of the dominant digital platforms’ broad effects on society is not possible within the existing federal regulatory structure. Agencies such as the Federal Trade Commission (FTC) and Department of Justice (DOJ) are filled with good and dedicated professionals, yet they are constrained in what they can do. Such limitations are perversely demonstrated by the recent headline-grabbing antitrust actions by both agencies. Antitrust enforcement, while important, is targeted against specific circumstances and cannot protect against general consumer abuses. Similarly, while the FTC also has authority over unfair and deceptive acts, many abuses in the digital marketplace are harmful but not considered deceptive and unfair. The FTC is further hampered by limited power to promulgate broad rules, thus constraining most of its activities to one-off proceedings against a singular company for a specific type of abuse rather than establishing broad behavioral rules across the consumer-facing digital economy.

#### Emprically true

Shapiro and Rabinowitz 97, \*Rounds Professor of Law, University of Kansas. B.A., 1970, J.D., 1973, University of Pennsylvania, \*\*Director, Project on Federal Regulation of the Program on Law and Government and Fellow in Administrative Law, Washington College of Law, American University. B.A., 1977, The Johns Hopkins University; J.D., 1980, L.L.M. (Labor Law) 1984, Georgetown University Law Center (Sidney and Randy, “PUNISHMENT VERSUS COOPERATION IN REGULATORY ENFORCEMENT: A CASE STUDY OF OSHA,” Administrative Law Review)

Incentives for Compliance

Regulated entities have short-term and long-term incentives for regulatory compliance. Short-term incentives may deter compliance; but long- term incentives, which are both economic and sociological, may compel a firm to comply voluntarily with government regulations. Whether firms will cooperate, however, depends on government enforcement policies. I. Short-Term Incentives Economic theory teaches that a firm's short-run incentive to comply with agency regulations is a function of the cost of both compliance and non- compliance. Compliance costs include the expense of obeying agency regulations, while noncompliance costs are related to the probability that an agency will find a firm out of compliance, and the size of the penalty the agency will assess.8 If the risk of being inspected is not high, there is little incentive for a firm to comply. For example, if a firm expects to have ten violations at $1,000 per violation, it is potentially liable for a total fine of $10,000. But if the firm only has a one in 1,000 chance of being caught, it will calculate the cost of noncompliance as the probability of being in- spected (one in 1,000) multiplied by the amount of the fine ($10,000), or ten dollars. 9 This example may seem extreme, but it is not. Employers routinely avoid paying OSHA fines because, with the exception of a few industries specifically targeted by OSHA, most industries are seldom in- spected by the agency.lO During the previous five years, OSHA failed to inspect seventy-five percent of the 6,41 1 sites where a fatal or serious acci- dent occurred from 1994 through May, 1995.11 2. Long-Term Incentives Although a firm may lack short-term incentives to comply with agency regulations, managers also have long-term incentives that induce compli- ance. In the long-run, firms are influenced by a magnitude of additional factors including "the extent that compliance costs can be passed onto cus- tomers, the average size of the firms in the industry, and the degree to which the regulations are consonant with liability law, market pressures, and the long-run economic interests of the enterprises."12 Firms may "sense that the long-run gains of retaining a reputation as a law-abiding corporate citizen may outweigh the short-run gains from regulatory non- compliance."13 Bankers and institutional investors, for example, may regard a firm with a reputation for environmental irresponsibility as poorly managed and prone to trouble, legislators may give it a "cold shoulder" to avoid the appearance of cooperating with corporate lawbreakers, and consumers could boycott the firm if it is publicly attacked by environmental or consumer groups.14 Although these results are not inevitable, the fact that they might occur encourages "risk-adverse corporate managers" to seek a conservative, trouble-avoiding policy. Social incentives also mitigate the impact of short-run economic considerations. Corporate managers are not just "value maximizers — of profits or of reputation" but they "are also often concerned to do what is right, to be faithful to their identity as law abiding citizens, and to sustain a self- concept of social responsibility."16 Professional training may also provide 17 a source of norms that encourage compliance. Employees concerned with regulatory matters, such as biologists, environmental engineers, industrial hygienists, lawyers, occupational physicians, safety experts, and toxicolo- gists, are interested in reducing the costs of regulatory compliance, but they also are loyal to the standards of their profession.18 The compliance advice given by these professionals is likely to reflect these norms.

### 2NC---AT: 2AC 3

#### This is the worst defict ever---antitrust does not immunize procompetitive behavior from any source of civil liability---so even if they are free from traditional antitrust liability born out

#### If it did---that would be because currently, the FTC enforces privacy law out of section 5 of the FTC act---legal disaggregaion prevents procompetitive justifications from encroaching upon privacy law.

#### It’s more durable and enforceable because regulations cannot be dislodged.

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)---sex edited

Regulation can also be comparatively slow to adapt to new market condi- tions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than anti- trust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transi- tion to more competitive structures.126 As Michael Boudin, a former DOJ anti- trust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congress[people] and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

### 2NC---AT: Siloing Deficit

#### 1. Poor appointments, politicization, and overlapping authority. Their argument lacks any empirical support.

Wright 12 [Joshua D. Wright, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” https://www.law.gmu.edu/assets/files/publications/working\_papers/1303DoExpertAgenciesOutperform.pdf]

In the context of US antitrust law, many commentators have recently called for an expansion of the Federal Trade Commission’s (FTC’s) adjudicatory decision-making authority pursuant to Section 5 of the FTC Act, increased rulemaking, and carving out exceptions for the agency from increased burdens of production facing private plaintiffs. These claims are often expressly grounded in the assertion that expert agencies generate higher quality decisions than federal district court judges. We call this assertion the expertise hypothesis and attempt to test it. The relevant question is whether the expert inputs available to generalist federal district court judges translate to higher quality outputs and better performance than the Commission produces in its role as an adjudicatory decision-maker. While many appear to assume agencies have courts beat on this margin, to our knowledge, this oft-cited reason to increase the discretion of agencies and the deference afforded them by reviewing courts is void of empirical support. Contrary to the expertise hypothesis, we find evidence suggesting the Commission does not perform as well as generalist judges in its adjudicatory antitrust decision-making role. Furthermore, while the available evidence is more limited, there is no clear evidence the Commission adds significant incremental value to the administrative law judge decisions it reviews. In light of these findings, we conclude there is little empirical basis for the various proposals to expand agency authority and deference to agency decisions. More generally, our results highlight the need for research on the relationship between institutional design and agency expertise in the antitrust context. I have never heard anyone argue that [the FTC] has displayed superior expertise to the courts when it comes to deciding antitrust cases.1 Introduction Governments and scholars have been increasingly willing to evaluate the performance of their competition and consumer protection agencies worldwide. Within the last few years alone, China,2 India,3 Brazil,4 and the European Union5 have undergone substantial institutional restructuring aimed at improving agency performance. At the same time, antitrust scholars have recently increased their focus upon the structure of competition enforcement institutions, giving rise to a burgeoning body of scholarly work.6 One critical dimension of the institutional design research agenda is how decision-making ought to be delegated between courts and agencies to best achieve the goals of competition policy. While antitrust scholars have long focused upon the importance of errors and the design of substantive legal rules to minimize error costs, relatively little attention has been paid to the myriad ways in which institutional design in general, and decision-making within expert competition agencies specifically, can improve the quality of these institutions. The organization of leadership and staff within a competition agency affects the structure of the decision-making process it undertakes. For example, the number of economists, the quality of their inputs, and the nature of their authority within a competition agency could affect agency enforcement decisions.7 Indeed, throughout its history the Federal Trade Commission (FTC) has experimented with various organizational designs in hopes of incorporating the optimal level of economic influence to achieve the agency’s goals.8 Similarly, the European Commission (EC) has responded to calls for more coherent economic analysis through the addition of a team of PhD economists to aid the EC’s Competition Directorate in improving its decision-making quality.9 The institutional design literature has identified a number of potential factors influencing decision-making, including whether the agency should be led by a single director or a collegiate body,10 the experience held by agency heads,11 the structure of enforcement,12 and methods of ensuring transparency in agency decision-making.13 There is no debate that theoretical potential for superior agency performance lies in its ability to harness its expertise. In practice, however, there is also little doubt that the observed design and structure of competition agencies in the USA bears little resemblance to the theoretical optimum. Holding aside the obvious and oft-discussed inefficiencies of multiple overlapping competition agencies, there appear to be other fundamental structural impediments to optimal agency performance. To take but one example, former FTC Chairman William Kovacic has written at length about the disappointing overall quality of appointments of FTC commissioners.14 While Congress envisioned a Commission comprising lawyers, business managers, and economists with superior achievements and substantial, diverse experience,15 what it got was—in no small part due to political interference16—a history and pattern of appointments evidencing a systematic failure to meet those expectations.17 Obviously, this is not to say that those appointed to lead the FTC are not talented professionals; it simply means the historic composition of the Commission has failed to encompass the qualities necessary to make it the leading authority in US antitrust law.18 Predicate to the question of precisely how to design competition agencies to improve their performance is the issue of precisely what locus of authority should be allocated to the expert agency. The answer to that question lies at the heart of many antitrust debates. Dissatisfied with recent changes in Sherman Act jurisprudence, some commentators have called for a shift in responsibility for shaping antitrust law from the courts to the agencies, reasserting the original vision of the FTC as an expert agency.19 A recurring and related issue in the debate over an expanded role for enforcement agencies—especially the FTC—in antitrust decision-making is whether Article III courts are sufficiently equipped to handle complex antitrust cases.20 Evidence indicates that complex antitrust cases involve economic analysis that is sometimes too complicated for courts to consistently decide properly.21 This is due in large part to the fact that courts are unable (some suggest unwilling22) to incorporate expert economic analysis into their antitrust decisions. Some commentators have argued, based upon courts’ imperfect decision-making abilities, that the FTC should have greater decision-making authority to offset courts’ shortcomings in understanding the complex economic analysis required to accurately assess modern antitrust issues.23 Which institution is better equipped to analyse complex modern antitrust cases? The debate is occasionally framed in unfair terms. There is no doubt the agency comprises antitrust and economic experts well equipped to analyse all modes of business dealings; in this sense, agencies certainly have greater economic expertise than the Article III judges as a general rule. But neither the expert economists in the Bureau of Economics nor the Bureau of Competition’s lawyers make decisions for the agency. Both ultimately provide inputs to the five-person Commission in a complex decision-making process. Economic and legal expertise are not the only inputs. Commissioners are political appointees that may or may not begin their terms with substantial antitrust experience.24 As the ultimate decision-makers in administrative litigation, the Commission is the body to which relevant analytical information must be transmitted. Comparing the expert Commission staff to combined expertise of the Article III judge and his law clerks is not the appropriate comparison; it also misses the point.25 The issue remains whether the expert inputs available to the Commission’s decision-makers manifest themselves in the context of administrative decision-making compared to generalist judges.

#### 2. The only scholarly attempt to empirically analyze comparative expertise utterly debunks their argument.

Joshua D. Wright 12, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” https://www.law.gmu.edu/assets/files/publications/working\_papers/1303DoExpertAgenciesOutperform.pdf

Our goal is to provide some empirical evidence testing the expertise hypothesis, namely, that expert agency decision-making will be superior to decision-making by generalist judges. Advocates have relied upon the expertise hypothesis to justify increased delegations of power to administrative agencies and increased judicial deference to those agencies’ decisions. In the antitrust context specifically, the expertise hypothesis has provided the primary intellectual basis for arguments for aggressive and expansive use of the FTC’s Section 5 authority outside the bounds of the Sherman Act,57 agency rulemaking,58 and increased deference to FTC decisions in federal court.59 We are not aware of any empirical studies comparing the relative performance of judges and agencies; there is, however, a relatively small but growing literature focusing upon the relationship between judicial specialization and performance.60 We test the expertise hypothesis by way of comparing the adjudicatory decisions of two different sets of decision-makers. We first compare the decisions of federal district court judges and FTC Commissioners. This comparison has a number of intuitively appealing features. First, both sets of decisions are appealed to federal courts of appeals. Second, most variants of the expertise hypothesis in the competition context appear to have precisely this comparison in mind.61 Congress intended and designed the FTC to be an expert agency with specialized knowledge and resources unavailable to generalist judges; it is that expertise and specialized knowledge that Congress and proponents of the expertise hypothesis presume will increase the quality of inputs into the Commissioners’ decision-making processes and thus also increase the quality of the outputs. Third, the Commission reviews ALJ decisions de novo, and thus its own decisions, like the district courts, are not bound by prior fact-finding.62 Comparison of judicial and Commission decisions allows a fairly intuitive and direct test of the expertise hypothesis. This comparison also suffers from some important limitations. Perhaps the most important is that Commission decisions are afforded greater deference than district court decisions by federal courts of appeal on review.63 Furthermore, cases come to the Commission after a full administrative trial. While the Commission need not afford ALJ decisions significant deference, the fact that cases must go through a full trial before they can be appealed to the Commission, and perhaps ultimately to a federal court of appeals, is an important difference between the two sets of decisions. Administrative cases in which defendants are willing to incur the costs of a full administrative trial and Commission review, including the costs of delay, may be systematically more likely to contain reversible error than federal district court decisions in the sample. Our second comparison takes a different approach, ignoring federal court decisions and focusing upon differences between ALJ and Commission decisions. The intuition of this approach is to try to estimate the ‘marginal product’ of Commission decision-making. We attempt to isolate the incremental impact of Commission input into the agency decision-making relative to ALJ decision-making without Commission input. Put simply, our sample ofResults In this section, we present simple differences in means followed by probit regression analysis for each of our two comparisons. Federal Trade Commissioners versus Generalist Judges Means comparisons We begin with some simple comparisons of the means to explore the differences in the appeal rates for Commission decisions and Article III judicial decisions. Figure 1 reports the results. Aside from including the appeal rate for the Article III judges and the Commissioners, the appeal rate for the Article III judges, conditional on the plaintiff winning, is also included. In our sample, cases decided by the Commission are 14 per cent more likely to be appealed than are cases decided by Article II judges. The difference is statistically significant at the 5 per cent level. The contrast between the Commission’s appeal rate and the Article III judges’ appeal rate conditional on the plaintiff winning the Article III case is greater and more statistically significant than the unconditional comparison. Commission decisions are 27 per cent more likely to be appealed than are the conditional cases by the Article III judges. The difference is statistically significant at the 1 per cent level and, in practical terms, quite large. The parties involved in FTC litigation are 25 per cent more likely to be disgruntled enough to appeal their case to the circuit court of appeals. Figure 2 compares Commission appeal rates with those of Article III judges with basic economic training. LEC-trained judges’ opinions are appealed at arate 5 percentage points lower than the decisions of their untrained Article III colleagues and a full 19 percentage points less frequently than those of the Commission. This difference is statistically significant at the 1 per cent level. One important difference between Commission decisions and decisions authored by district court judges is that, as discussed above, the Commission’s de novo review takes place after a full administrative trial in front an ALJ. Thus, it might be the case that different stages of factual development drive differences in appeal rates. For a preliminary examination of this possibility, reports appeal rates of Commissioners and Article III judges in antitrust cases conditioned upon limiting the judicial sample to decisions at or after the summary judgment stage. Judicial appeal rates are only 8 percentage points lower than the Commission’s, and the difference is not statistically significant. While we prefer comparisons based upon appeals rather than reversals, we note that we obtain similar, though less drastic, results when we use reversals. Figure 4 shows that Commission opinions are reversed 20 per cent of the time and decisions by Article III judges are reversed only 5 per cent of the time. The Article III judges’ reversal rate is nearly identical to a subset of Article III judge decisions conditional on the plaintiff winning at trial. This 15 per cent point difference is statistically significant at the 1 per cent level. Figures 5 and 6 report comparative reversal rates when we condition judicial reversal rates on economic training and decisions at or after the summary judgment stage. The differences remain stable at approximately 15 per cent; judicial reversal rates are substantially lower, providing some preliminary evidence contrary to the expertise hypothesis. The difference is statistically significant at the 1 per cent level. These means comparisons provide preliminary evidence suggesting the Commission’s decisions are more likely to be appealed and reversed than those of Article III generalist judges. Taken at face value, the comparison implies that on this particular margin of performance—adjudicatory decision-making— Commissioners do not perform as well as district court generalists. However, these differences in appeal and reversal rates may be the result of omitted variables or sample selection. In the next section, we use a probit regression framework to control for other factors that may reasonably influence the appeal and reversal rates of the Commission and Article III judges.

## Advantage 1

#### No AI extinction---it’s impossible and centuries away at best.

Oren Etzioni, 16 - CEO of the Allen Institute for Artificial Intelligence and Professor of Computer Science at the University of Washington; "Most experts say AI isn’t as much of a threat as you might think," MIT Technology Review, 9-20-2016, https://www.technologyreview.com/s/602410/no-the-experts-dont-think-superintelligent-ai-is-a-threat-to-humanity/

To get a more accurate assessment of the opinion of leading researchers in the field, I turned to the Fellows of the American Association for Artificial Intelligence, a group of researchers who are recognized as having made significant, sustained contributions to the field.

In early March 2016, AAAI sent out an anonymous survey on my behalf, posing the following question to 193 fellows:

“In his book, Nick Bostrom has defined Superintelligence as ‘an intellect that is much smarter than the best human brains in practically every field, including scientific creativity, general wisdom and social skills.’ When do you think we will achieve Superintelligence?”

Over the next week or so, 80 fellows responded (a 41 percent response rate), and their responses are summarized below:

In essence, according to 92.5 percent of the respondents, superintelligence is beyond the foreseeable horizon. This interpretation is also supported by written comments shared by the fellows.

Even though the survey was anonymous, 44 fellows chose to identify themselves, including Geoff Hinton (deep-learning luminary), Ed Feigenbaum (Stanford, Turing Award winner), Rodney Brooks (leading roboticist), and Peter Norvig (Google).

The respondents also shared several comments, including the following:

“Way, way, way more than 25 years. Centuries most likely. But not never.”

“We’re competing with millions of years’ evolution of the human brain. We can write single-purpose programs that can compete with humans, and sometimes excel, but the world is not neatly compartmentalized into single-problem questions.”

“Nick Bostrom is a professional scare monger. His Institute’s role is to find existential threats to humanity. He sees them everywhere. I am tempted to refer to him as the ‘Donald Trump’ of AI.”

Surveys do, of course, have limited scientific value. They are notoriously sensitive to question phrasing, selection of respondents, etc. However, it is the one source of data that Bostrom himself turned to.

Another methodology would be to extrapolate from the current state of AI to the future. However, this is difficult because we do not have a quantitative measurement of the current state of human-level intelligence. We have achieved superintelligence in board games like chess and Go (see “Google’s AI Masters Go a Decade Earlier than Expected”), and yet our programs failed to score above 60 percent on eighth grade science tests, as the Allen Institute’s research has shown (see “The Best AI Program Still Flunks an Eighth Grade Science Test”), or above 48 percent in disambiguating simple sentences (see “Tougher Turing Test Exposes Chatbots’ Stupidity”).

There are many valid concerns about AI, from its impact on jobs to its uses in autonomous weapons systems and even to the potential risk of superintelligence. However, predictions that superintelligence is on the foreseeable horizon are not supported by the available data. Moreover, doom-and-gloom predictions often fail to consider the potential benefits of AI in preventing medical errors, reducing car accidents, and more.

Finally, it’s possible that AI systems could collaborate with people to create a symbiotic superintelligence. That would be very different from the pernicious and autonomous kind envisioned by Professor Bostrom.

#### Safeguards check.

Shermer 17, Dr. Michael Shermer is the Founding Publisher of Skeptic magazine, the host of the Science Salon Podcast, and a Presidential Fellow at Chapman University. ("Why artificial intelligence is not an existential threat", *Skeptic*, Vol. 22, No. 2, 2017, link.gale.com/apps/doc/A497859054/AONE?u=ksstate\_ukans&sid=AONE&xid=dc2288db)

Pinker agrees that there is plenty of time to plan for all conceivable contingencies and build safeguards into our AI systems. "They would not need any ponderous 'rules of robotics' or some newfangled moral philosophy to do this, just the same common sense that went into the design of food processors, table saws, space heaters, and automobiles." Sure, an ASI would be many orders of magnitude smarter than these machines, but Pinker reminds us of the AI hyperbole we've been fed for decades: "The worry that an AI system would be so clever at attaining one of the goals programmed into it (like commandeering energy) that it would run roughshod over the others (like human safety) assumes that AI will descend upon us faster than we can design fail-safe precautions. The reality is that progress in AI is hype-defyingly slow, and there will be plenty of time for feedback from incremental implementations, with humans wielding the screwdriver at every stage." (22) Former Google CEO Eric Schmidt agrees, responding to the fears expressed by Hawking and Musk this way: "Don't you think the humans would notice this, and start turning off the computers?" He also noted the irony in the fact that Musk has invested $1 billion into a company called OpenAI that is "promoting precisely AI of the kind we are describing." (23) Google's own DeepMind has developed the concept of an AI off-switch, playfully described as a "big red button" to be pushed in the event of an attempted AI takeover. "We have proposed a framework to allow a human operator to repeatedly safely interrupt a reinforcement learning agent while making sure the agent will not learn to prevent or induce these interruptions," write the authors Laurent Orseau from DeepMind and Stuart Armstrong from the Future of Humanity Institute, in a paper titled "Safely Interruptible Agents." They even suggest a precautionary scheduled shutdown every night at 2 AM for an hour so that both humans and AI are accustomed to the idea. "Safe interruptibility can be useful to take control of a robot that is misbehaving and may lead to irreversible consequences, or to take it out of a delicate situation, or even to temporarily use it to achieve a task it did not learn to perform or would not normally receive rewards for this." (24) As well, it is good to keep in mind that artificial intelligence is not the same as artificial consciousness. Thinking machines may not be sentient machines. Finally, Andrew Ng of Baidu responded to Elon Musk's ASI concerns by noting (in a jab at the entrepreneur's ambitions for colonizing the red planet) it would be "like worrying about overpopulation on Mars when we have not even set foot on the planet yet." (25)

### D---Superintelligence---AT: Evil AI

#### No evil superintelligence.

Shermer 17, Dr. Michael Shermer is the Founding Publisher of Skeptic magazine, the host of the Science Salon Podcast, and a Presidential Fellow at Chapman University. ("Why artificial intelligence is not an existential threat", *Skeptic*, Vol. 22, No. 2, 2017, link.gale.com/apps/doc/A497859054/AONE?u=ksstate\_ukans&sid=AONE&xid=dc2288db)

This brings to mind the "hard problem" of consciousness—if we don't understand how this happens in humans, how could we program it into computers? As Steven Pinker elucidated in his answer to the 2015 Edge Question on what to think about machines that think, "AI dystopias project a parochial alpha-male psychology onto the concept of intelligence. They assume that superhumanly intelligent robots would develop goals like deposing their masters or taking over the world." It is equally possible, Pinker suggests, that "artificial intelligence will naturally develop along female lines: fully capable of solving problems, but with no desire to annihilate innocents or dominate the civilization." (14) So the fear that computers will become emotionally evil are unfounded, because without the suite of these evolved emotions it will never occur to AIs to take such actions against us.

#### Polarization’s inevitable — party strength and institutional distrust

Kuo 18 — Didi Kuo (research scholar at the Program on American Democracy in Comparative Perspective at Stanford University’s Center on Democracy, Development, and the Rule of Law), 3-27-2018, “The Paradox of Party Polarization," American Interest, <https://www.the-american-interest.com/2018/03/27/paradox-party-polarization/>) jbb

It seems banal to observe that Republicans and Democrats agree on very little these days. The responses of elected officials to recent political events, such as Robert Mueller’s investigation into Russian election interference and the school shooting in Parkland, Florida, predictably echo partisan talking points. Partisanship has risen to levels unseen in recent political memory, both among politicians and among citizens. This has implications for governance, of course; Senator Joe Manchin, a centrist Democrat, recently lamented that the job of legislating “sucks.” Partisanship influences the way citizens interpret information and consume the news, making facts subject to debate; there is increasing hostility in the way people of opposing parties talk to one another. There is even evidence that partisanship affects personal decisions about hiring, marriage, and friendship. Partisan rancor has fueled distrust of government and disgust with our partisan system. During two bitterly fought presidential primaries in 2016, a plurality of voters—upwards of 40 percent—described themselves as independents. Most voters say that the two parties serve the interests of donors and lobbyists, rather than citizens. In surveys of voter confidence, parties rank lower than almost all other political and economic institutions, including the police, the bureaucracy, and big business. Nor is this problem unique to the United States. In 2016, the traditional parties in Europe faced a series of electoral challenges. Party membership has been declining in many countries, and new parties, particularly on the far-Right, mobilized large bases of support. How can partisanship be at record highs while distrust in parties is also at historic levels? Commentators are flippant in their description of parties as strong or weak. When the Republican Congress blocked President Obama’s policies, parties seemed “strong”; when the 2016 primaries included 17 Republican challengers to Democratic front-runner Hillary Clinton, they seemed “weak.” When parties can’t reach compromise on policy, we can’t seem to decide if this is because they’re too strong (and therefore too committed to their respective positions) or too weak (and therefore unable to put governance before mere partisanship or special interests). We live in a paradoxical time of party strength alongside party weakness. On the one hand, parties are stronger than ever before. They are well-financed, professional organizations that bring a mass of resources to bear on campaigns and candidates. On the other, there are also many indications of party weakness, with serious implications for the strength of our representative institutions. First, what are some elements of party strength? For one, the parties are more ideologically cohesive than they have been in the past. Since the 1980s, Southern Democrats have slowly migrated to the Republican Party. When Republicans won a majority of seats to the House of Representatives in 1994 (after four decades of serving in the minority), Newt Gingrich and party leaders famously distributed lists to members recommending conservative texts to read, and appropriate words to use in policy debates and speeches. Party-line voting has become increasingly common in Congress, with polarization rising steadily over the past half-century. Contrast this with parties in the postwar period, when the Republican and Democrat Parties were composed of ideologically diverse factions. Bipartisan negotiation and compromise were more common when the parties were less divided, but at the time, scholars worried that there was too little, rather than too much, ideological differentiation between the parties. Another element of party strength could be the hyper-partisanship of the electorate. Voters who identify as Republicans and Democrats are now more conservative and more liberal, respectively, than in previous decades. They also identify more strongly with party labels, and are more likely to say that members of the other party can’t be trusted or don’t have the country’s best interest in mind. But this sort of party loyalty seems more tribal than substantive. Partisan ties are beneficial when they motivate citizens to care about politics, to learn about policy, and to become politically active. But when partisanship sows discord or breeds hostility between voters—and when high levels of polarization also alienate many voters who once identified with a party—it can become counterproductive, or even toxic. Hyper-partisanship creates symbolic disagreement over marginal differences in policy and amplifies the stakes of political debate. It can exacerbate a coarsening of political discourse, and a reliance on ad hominem attacks or lies about the opposing party. Finally, parties are strong organizationally. The Republican and Democratic National Committees manage millions of dollars for use in campaigns. An expansive network of consulting and public relations firms help both parties strategize and advertise. Donors, PACs, and super PACs raise vast sums for candidates and party activities.

#### Collapse of trust is happening due to “FAKE NEWS!”

Friedman 18 — Uri Friedman (Staff writer at The Atlantic), 1-21-2018. "Trust Is Collapsing in America," Atlantic. https://www.theatlantic.com/international/archive/2018/01/trust-trump-america-world/550964/

“In God We Trust,” goes the motto of the United States. In God, and apparently little else. Only a third of Americans now trust their government “to do what is right”—a decline of 14 percentage points from last year, according to a new report by the communications marketing firm Edelman. Forty-two percent trust the media, relative to 47 percent a year ago. Trust in business and non-governmental organizations, while somewhat higher than trust in government and the media, decreased by 10 and nine percentage points, respectively. Edelman, which for 18 years has been asking people around the world about their level of trust in various institutions, has never before recorded such steep drops in trust in the United States. “This is the first time that a massive drop in trust has not been linked to a pressing economic issue or catastrophe like [Japan’s 2011] Fukushima nuclear disaster,” Richard Edelman, the head of the firm, noted in announcing the findings. “In fact, it’s the ultimate irony that it’s happening at a time of prosperity, with the stock market and employment rates in the U.S. at record highs.” “The root cause of this fall,” he added—just days after polling revealed that Americans’ definition of “fake news” depends as much on their politics as the accuracy of the news, and a Republican senator condemned the American president’s Stalinesque attacks on the press and “evidence-based truth,” and a leading think tank warned that America was suffering from “truth decay” as a result of political polarization and social media—is a “lack of objective facts and rational discourse.” It used to be that what Edelman labels the “informed public”—those aged 25 to 64 who have a college degree, regularly consume news, and are in the top 25 percent of household income for their age group—placed far greater trust in institutions than the U.S. public as a whole. This year, however, the gap all but vanished, with trust in government in particular plummeting 30 percentage points among the informed public. America is now home to the least-trusting informed public of the 28 countries that the firm surveyed, right below South Africa. Distrust is growing most among younger, high-income Americans. But whereas trust is falling in the United States and a number of other countries with tumultuous politics at the moment, including South Africa, Italy, and Brazil, it’s actually increasing elsewhere, most prominently in China. Eighty-four percent of Chinese respondents said they trusted government—levels the United States hasn’t seen since the early Johnson administration—and 71 percent said they trusted the media. The world’s two most powerful countries, one democratic and the other authoritarian, are moving in opposite directions. In each case, the trajectory is largely being determined by people’s views of government. Chinese respondents are probably reflecting on the upward mobility and improving quality of life that their political leaders have helped deliver, David Bersoff, the lead researcher for the Edelman report, told me: “I’m looking at my life now and it looks a lot better than it did before, and I can look forward and still see things that would get even better.” When I asked Richard Edelman why survey participants tended to trust technology companies much more than government, he reasoned that it was because those companies “have products that perform for you every day—whether it’s your cell phone or your airline.” Chinese respondents might have been making a similar statement about the government’s performance. “There’s a lot of chaos and uncertainty in the world, and when there is chaos and uncertainty in the world centralized, authoritative power tends to do better,” Bersoff added. (It’s worth noting that other countries with high trust levels in the report range politically from democratic India to more-or-less democratic Indonesia and Singapore to the undemocratic United Arab Emirates.) Percent Change in Trust in Government, Media, Business, and NGOs, 2017 — 2018 2018 EDELMAN TRUST BAROMETER Why, though, is trust eroding in the United States in the absence of an economic crisis or other kind of catastrophe? What’s changed, according to the Edelman report, is that it’s gotten much harder to discern what is and isn’t true—where the boundaries are between fact, opinion, and misinformation. “The lifeblood of democracy is a common understanding of the facts and information that we can then use as a basis for negotiation and for compromise,” said Bersoff. “When that goes away, the whole foundation of democracy gets shaken.”

## Advantage 2

### 2NC---!D---Nuclear Terrorism

#### No nuclear terrorism---the logistics of building and maintaining enriched uranium are impossibly sophisticated, and nuclear material is well-guarded. Terrorists are conservative and adhere to methods with proven track records---Ward

#### No nuclear terror---even if acquisition.

\* fear of backlash from supporters, internal division, and international retaliation = deterrence

McIntosh & Storey 18 (Christopher McIntosh is visiting assistant professor of political studies at Bard College, Ph.D. in 2013 from The University of Chicago, specializing in international relations and has an M.A. in Security Studies from Georgetown & Ian Storey is a fellow at the Hannah Arendt Center for Politics and Humanities at Bard College, Ph.D. in Political Science from the University of Chicago; Between Acquisition and Use: Assessing the Likelihood of Nuclear Terrorism, *International Studies Quarterly*, 19 April 2018, sqx087, https://doi.org/10.1093/isq/sqx087)

Our approach offers a point of departure for strategically assessing the options, likely responses, and potential outcomes that could arise from the different paths available to a nuclear-armed non-state group. Too often analysts treat the decision by such groups to use nuclear weapons as if it occurs in a vacuum. In practice, terrorist groups face many short-term and long-term considerations. They are influenced by factors both external and internal to their organization. These include the potential for backlash among supporters, internal factionalization over nuclear strategy and doctrine, and an overwhelming response by the target state and the international community.

Moreover, we suggest a way to bring the recursivity of strategic choice into the account of terrorist organizational decision-making. These organizations must consider the long-term effects of a nuclear attack. An attack occurs in the context of an ongoing campaign by a well-established organization. Opportunity costs exist because escalating to nuclear attack forecloses future options. As well, conducting an attack may not only preclude other strategies, but the continued existence of the group itself. This changes the game significantly. In most cases, a nuclear attack must present not just an effective option for the moment, but the only strategic option worth pursuing going forward.

Once we take these considerations into account, the detonation of a nuclear weapon generally appears the least strategically advantageous option for non-state groups. Indeed, the factors presented here are analytically independent, adaptable, and scalable to particular threat contexts. We can therefore use our framework to study the opportunities and constraints faced by specific future groups. It should therefore assist in the process of planning responses to potential nuclear acquisition by terrorist groups.

Successive governments have now identified nuclear terrorism as a critical concern in the formulation of security policy. This line of thinking systematically underspecifies, or simply misunderstands, key considerations that terrorist organizations take into account. These include the group's organizational survival, opportunity costs, and the conflation of victory with the end of hostilities. Each factor presents strong disincentives to immediate nuclear attack. A nuclear-armed terrorist group is exceedingly dangerous, but for different reasons than normally assumed. The options available to the group that fall short of detonation or attack remain considerable, albeit less spectacular and immediate.

Just as scholars like Bunn et al. (2015) are careful to do, political actors and analysts should resist uncritically deploying the term “nuclear terrorism” in an umbrella fashion. This point goes beyond even the attempts at disaggregating “use” presented here. The threat of an attack involving an improvised nuclear device is vastly different than that of a “dirty bomb,” and both have little in common with the threat posed by an attack on a nuclear facility. Each deserves separate consideration when formulating policy, even if measures taken to address these concerns, such as controlling nuclear leakage, ultimately overlap. If any of the acquisition or threat scenarios we explore come to fruition, then potential target states will need strategies that potentially employ positive, as well as negative, incentives to lessen the attractiveness of nuclear attack. As we argue, a crisis involving a nuclear-armed terrorist group will be a negotiation—regardless of what the target state chooses to label it. Far from demonstrating weakness, employing threats while dangling the possibility of political concessions can widen internal divisions, heightening the overall organizational costs of escalating violence (Toros 2008; Cronin 2009).

Finally, efforts designed to improve intelligence capabilities both prior to and post-attack remain vital. Signature analysis as a forensic measure has shown promise as a way of identifying the origin of nuclear material—in some cases it can identify whether or not it was provided by a state (Kristo and Tumey 2013). These efforts would be improved with a more widespread international commitment via the IAEA to placing signature markers in weapons and weaponizable material (Korbatov et al. 2015, 70; Findlay 2014, 6).

Ultimately, when it comes to the threat of a nuclear attack by a terrorist, presumption should lie squarely on the side of skepticism rather than inevitability. While some terrorist organizations have some incentives for nuclear acquisition, paradoxically and thankfully, the most strategic uses of a nuclear weapon fall well short of actual nuclear attack. From a scholarly perspective, as well as a political one, we need to start to think through how states would act in a world with nuclear-armed non-state actors. In doing so, we should avoid assumptions that fit neither with known nuclear strategy nor the empirical behavior of non-state organizations. Like most clichés, the post–Cold War trope that the threat of attack is higher now than it was during the US-USSR arms race (Litwak 2016) obscures much more than it reveals.

#### Risk is nonexistent.

Weiss 15—visiting scholar at the Center for International Security and Cooperation at Stanford

(Leonard, “On fear and nuclear terrorism”, Bulletin of the Atomic Scientists March/April 2015 vol. 71 no. 2 75-87)

If the fear of nuclear war has thus had some positive effects, the fear of nuclear terrorism has had mainly negative effects on the lives of millions of people around the world, including in the United States, and even affects negatively the prospects for a more peaceful world. Although there has been much commentary on the interest that Osama bin Laden, when he was alive, reportedly expressed in obtaining nuclear weapons (see Mowatt-Larssen, 2010), and some terrorists no doubt desire to obtain such weapons, evidence of any terrorist group working seriously toward the theft of nuclear weapons or the acquisition of such weapons by other means is virtually nonexistent. This may be due to a combination of reasons. Terrorists understand that it is not hard to terrorize a population without committing mass murder: In 2002, a single sniper in the Washington, DC area, operating within his own automobile and with one accomplice, killed 10 people and changed the behavior of virtually the entire populace of the city over a period of three weeks by instilling fear of being a randomly chosen shooting victim when out shopping. Terrorists who believe the commission of violence helps their cause have access to many explosive materials and conventional weapons to ply their “trade.” If public sympathy is important to their cause, an apparent plan or commission of mass murder is not going to help them, and indeed will make their enemies even more implacable, reducing the prospects of achieving their goals. The acquisition of nuclear weapons by terrorists is not like the acquisition of conventional weapons; it requires significant time, planning, resources, and expertise, with no guarantees that an acquired device would work. It requires putting aside at least some aspects of a group’s more immediate activities and goals for an attempted operation that no terrorist group has previously accomplished. While absence of evidence does not mean evidence of absence (as then-Secretary of Defense Donald Rumsfeld kept reminding us during the search for Saddam’s nonexistent nuclear weapons), it is reasonable to conclude that the fear of nuclear terrorism has swamped realistic consideration of the threat. As Brian Jenkins, a longtime observer of terrorist groups, wrote in 2008: Nuclear terrorism … turns out to be a world of truly worrisome particles of truth. Yet it is also a world of fantasies, nightmares, urban legends, fakes, hoaxes, scams, stings, mysterious substances, terrorist boasts, sensational claims, description of vast conspiracies, allegations of coverups, lurid headlines, layers of misinformation and disinformation. Much is inconclusive or contradictory. Only the terror is real. (Jenkins, 2008: 26) The three ways terrorists might get a nuke To illustrate in more detail how fear has distorted the threat of nuclear terrorism, consider the three possibilities for terrorists to obtain a nuclear weapon: steal one; be given one created by a nuclear weapon state; manufacture one. None of these possibilities has a high probability of occurring. Stealing nukes. Nothing is better protected in a nuclear weapon state than the weapons themselves, which have multiple layers of safeguards that, in the United States, include intelligence and surveillance, electronic locks (including so-called “permissive action links” that prevent detonation unless a code is entered into the lock), gated and locked storage facilities, armed guards, and teams of elite responders if an attempt at theft were to occur. We know that most weapon states have such protections, and there is no reason to believe that such protections are missing in the remaining states, since no weapon state would want to put itself at risk of an unintended nuclear detonation of its own weapons by a malevolent agent. Thus, the likelihood of an unauthorized agent secretly planning a theft, without being discovered, and getting access to weapons with the intent and physical ability to carry them off in the face of such layers of protection is extremely low—but it isn’t impossible, especially in the case where the thief is an insider. The insider threat helped give credibility to the stories, circulating about 20 years ago, that there were “loose nukes” in the USSR, based on some statements by a Soviet general who claimed the regime could not account for more than 40 “suitcase nukes” that had been built. The Russian government denied the claim, and at this point there is no evidence that any nukes were ever loose. Now, it is unclear if any such weapon would even work after 20 years of corrosion of both the nuclear and non-nuclear materials in the device and the radioactive decay of certain isotopes. Because of the large number of terrorist groups operating in its geographic vicinity, Pakistan is frequently suggested as a possible candidate for scenarios in which a terrorist group either seizes a weapon via collaboration with insiders sympathetic to its cause, or in which terrorists “inherit” nuclear weapons by taking over the arsenal of a failed nuclear state that has devolved into chaos. Attacks by a terrorist group on a Pakistani military base, at Kamra, which is believed to house nuclear weapons in some form, have been referenced in connection with such security concerns (Nelson and Hussain, 2012). However, the Kamra base contained US fighter planes, including F-16s, used to bomb Taliban bases in tribal areas bordering Afghanistan, so the planes, not nuclear weapons, were the likely target of the terrorists, and in any case the mission was a failure. Moreover, Pakistan is not about to collapse, and the Pakistanis are known to have received major international assistance in technologies for protecting their weapons from unauthorized use, store them in somewhat disassembled fashion at multiple locations, and have a sophisticated nuclear security structure in place (see Gregory, 2013; Khan, 2012). However, the weapons are assembled at times of high tension in the region, and, to keep a degree of uncertainty in their location, they are moved from place to place, making them more vulnerable to seizure at such times (Goldberg and Ambinder, 2011). (It should be noted that US nuclear weapons were subject to such risks during various times when the weapons traveled US highways in disguised trucks and accompanying vehicles, but such travel and the possibility of terrorist seizure was never mentioned publicly.) Such scenarios of seizure in Pakistan would require a major security breakdown within the army leading to a takeover of weapons by a nihilistic terrorist group with little warning, while army loyalists along with India and other interested parties (like the United States) stand by and do not intervene. This is not a particularly realistic scenario, but it’s also not a reason to conclude that Pakistan’s nuclear arsenal is of no concern. It is, not only because of an internal threat, but especially because it raises the possibility of nuclear war with India. For this and other reasons, intelligence agencies in multiple countries spend considerable resources tracking the Pakistani nuclear situation to reduce the likelihood of surprises. But any consideration of Pakistan’s nuclear arsenal does bring home (once again) the folly of US policy in the 1980s, when stopping the Pakistani nuclear program was put on a back burner in order to prosecute the Cold War against the Soviets in Afghanistan (which ultimately led to the establishment of Al Qaeda). Some of the loudest voices expressing concern about nuclear terrorism belong to former senior government officials who supported US assistance to the mujahideen and the accompanying diminution of US opposition to Pakistan’s nuclear activities. Acquiring nukes as a gift. Following the shock of 9/11, government officials and the media imagined many scenarios in which terrorists obtain nuclear weapons; one of those scenarios involves a weapon state using a terrorist group for delivery of a nuclear weapon. There are at least two reasons why this scenario is unlikely: First, once a weapon state loses control of a weapon, it cannot be sure the weapon will be used by the terrorist group as intended. Second, the state cannot be sure that the transfer of the weapon has been undetected either before or after the fact of its detonation (see Lieber and Press, 2013). The use of the weapon by a terrorist group will ultimately result in the transferring nation becoming a nuclear target just as if it had itself detonated the device. This is a powerful deterrent to such a transfer, making the transfer a low-probability event. Although these first two ways in which terrorists might obtain a nuclear weapon have very small probabilities of occurring (there is no available data suggesting that terrorist groups have produced plans for stealing a weapon, nor has there been any public information suggesting that any nuclear weapon state has seriously considered providing a nuclear weapon to a sub-national group), the probabilities cannot be said to be zero as long as nuclear weapons exist. Manufacturing a nuclear weapon. To accomplish this, a terrorist group would have to obtain an appropriate amount of one of the two most popular materials for nuclear weapons, highly enriched uranium (HEU) or plutonium separated from fuel used in a production reactor or a power reactor. Weapon-grade plutonium is found in weapon manufacturing facilities in nuclear weapon states and is very highly protected until it is inserted in a weapon. Reactor-grade plutonium, although still capable of being weaponized, is less protected, and in that sense is a more attractive target for a terrorist, especially since it has been produced and stored in prodigious quantities in a number of nuclear weapon states and non-weapon states, particularly Japan. But terrorist use of plutonium for a nuclear explosive device would require the construction of an implosion weapon, requiring the fashioning of an appropriate explosive lens of TNT, a notoriously difficult technical problem. And if a high nuclear yield (much greater than 1 kiloton) is desired, the use of reactor-grade plutonium would require a still more sophisticated design. Moreover, if the plutonium is only available through chemical separation from some (presumably stolen) spent fuel rods, additional technical complications present themselves. There is at least one study showing that a small team of people with the appropriate technical skills and equipment could, in principle, build a plutonium-based nuclear explosive device (Mark et al., 1986). But even if one discounts the high probability that the plan would be discovered at some stage (missing plutonium or spent fuel rods would put the authorities and intelligence operations under high alert), translating this into a real-world situation suggests an extremely low probability of technical success. More likely, according to one well-known weapon designer,4 would be the death of the person or persons in the attempt to build the device. There is the possibility of an insider threat; in one example, a team of people working at a reactor or reprocessing site could conspire to steal some material and try to hide the diversion as MUF (materials unaccounted for) within the nuclear safeguards system. But this scenario would require intimate knowledge of the materials accounting system on which safeguards in that state are based and adds another layer of complexity to an operation with low probability of success. The situation is different in the case of using highly enriched uranium, which presents fewer technical challenges. Here an implosion design is not necessary, and a “gun type” design is the more likely approach. Fear of this scenario has sometimes been promoted in the literature via the quotation of a famous statement by nuclear physicist Luis Alvarez that dropping a subcritical amount of HEU onto another subcritical amount from a distance of five feet could result in a nuclear yield. The probability of such a yield (and its size) would depend on the geometry of the HEU components and the amount of material. More likely than a substantial nuclear explosion from such a scenario would be a criticality accident that would release an intense burst of radiation, killing persons in the immediate vicinity, or (even less likely) a low-yield nuclear “fizzle” that could be quite damaging locally (like a large TNT explosion) but also carry a psychological effect because of its nuclear dimension. In any case, since the critical mass of a bare metal perfect sphere of pure U-235 is approximately 56 kilograms, stealing that much highly enriched material (and getting away without detection, an armed fight, or a criticality accident) is a major problem for any thief and one significantly greater than the stealing of small amounts of HEU and lower-enriched material that has been reported from time to time over the past two decades, mostly from former Soviet sites that have since had their security greatly strengthened. Moreover, fashioning the material into a form more useful or convenient for explosive purposes could likely mean a need for still more material than suggested above, plus a means for machining it, as would be the case for HEU fuel assemblies from a research reactor. In a recent paper, physics professor B. C. Reed discusses the feasibility of terrorists building a low-yield, gun-type fission weapon, but admittedly avoids the issue of whether the terrorists would likely have the technical ability to carry feasibility to realization and whether the terrorists are likely to be successful in stealing the needed material and hiding their project as it proceeds (Reed, 2014). But this is the crux of the nuclear terrorism issue. There is no argument about feasibility, which has been accepted for decades, even for plutonium-based weapons, ever since Ted Taylor first raised it in the early 1970s5 and a Senate subcommittee held hearings in the late 1970s on a weapon design created by a Harvard dropout from information he obtained from the public section of the Los Alamos National Laboratory library (Fialka, 1978). Likewise, no one can deny the terrible consequences of a nuclear explosion. The question is the level of risk, and what steps are acceptable in a democracy for reducing it. Although the attention in the literature given to nuclear terrorism scenarios involving HEU would suggest major attempts to obtain such material by terrorist groups, there is only one known case of a major theft of HEU. It involves a US government contractor processing HEU for the US Navy in Apollo, Pennsylvania in the 1970s at a time when security and materials accounting were extremely lax. The theft was almost surely carried out by agents of the Israeli government with the probable involvement of a person or persons working for the contractor, not a sub-national terrorist group intent on making its own weapons (Gilinsky and Mattson, 2010). The circumstances under which this theft occurred were unique, and there was significant information about the contractor’s relationship to Israel that should have rung alarm bells and would do so today. Although it involved a government and not a sub-national group, the theft underscores the importance of security and accounting of nuclear materials, especially because the technical requirements for making an HEU weapon are less daunting than for a plutonium weapon, and the probability of success by a terrorist group, though low, is certainly greater than zero. Over the past two decades, there has been a significant effort to increase protection of such materials, particularly in recent years through the efforts of nongovernmental organizations like the International Panel on Fissile Materials6 and advocates like Matthew Bunn working within the Obama administration (Bunn and Newman, 2008), though the administration has apparently not seen the need to make the materials as secure as the weapons themselves. Are terrorists even interested in making their own nuclear weapons? A recent paper (Friedman and Lewis, 2014) postulates a scenario by which terrorists might seize nuclear materials in Pakistan for fashioning a weapon. While jihadist sympathizers are known to have worked within the Pakistani nuclear establishment, there is little to no evidence that terrorist groups in or outside the region are seriously trying to obtain a nuclear capability. And Pakistan has been operating a uranium enrichment plant for its weapons program for nearly 30 years with no credible reports of diversion of HEU from the plant. There is one stark example of a terrorist organization that actually started a nuclear effort: the Aum Shinrikyo group. At its peak, this religious cult had a membership estimated in the tens of thousands spread over a variety of countries, including Japan; its members had scientific expertise in many areas; and the group was well funded. Aum Shinrikyo obtained access to natural uranium supplies, but the nuclear weapon effort stalled and was abandoned. The group was also interested in chemical weapons and did produce sarin nerve gas with which they attacked the Tokyo subway system, killing 13 persons. Aum Shinrikyo is now a small organization under continuing close surveillance. What about highly organized groups, designated appropriately as terrorist, that have acquired enough territory to enable them to operate in a quasi-governmental fashion, like the Islamic State (IS)? Such organizations are certainly dangerous, but how would nuclear terrorism fit in with a program for building and sustaining a new caliphate that would restore past glories of Islamic society, especially since, like any organized government, the Islamic State would itself be vulnerable to nuclear attack? Building a new Islamic state out of radioactive ashes is an unlikely ambition for such groups. However, now that it has become notorious, apocalyptic pronouncements in Western media may begin at any time, warning of the possible acquisition and use of nuclear weapons by IS. Even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects. And, of course, 9/11 has heightened sensitivity to the need for protection, lowering further the probability of a successful effort.

### 2NC---UQ---Terrorism

#### Lockdowns and media distraction check.

Byman & Amunson 8-20-2020, \*senior fellow in the Center for Middle East Policy at Brookings, \*\*Analyst - U.S. Government. (Daniel L., Andrew, "Counterterrorism in a time of COVID", *Brookings*, https://www.brookings.edu/blog/order-from-chaos/2020/08/20/counterterrorism-in-a-time-of-covid/)

TERRORISTS FACE NEW BURDENS

The pandemic is also likely to disrupt terrorist group operations and fundraising. In part, this is due to travel restrictions. In addition, however, terrorists compete for recruits and resources with other causes. As world and local attention focuses on the pandemic, the ability of terrorist groups to publicize their causes is crowded out — the world is not more for them or more against them, it is simply ignoring them.

The shift online, which is particularly pronounced in the white supremacist world, is likely to grow as a result of the pandemic. Stuck at home, it is harder to get to a training camp or a conflict zone, but people have more time to spend in virtual cesspools where extremism dwells. So far, judging by the decline in flows of foreign fighters, terrorists have had little success exploiting the coronavirus in their propaganda, but they in general are good at exploiting conspiracy theories and otherwise taking advantage of dangerous and misguided ideas that others promulgate.

#### Counterterror’s highly effective now---info-sharing and local approaches.

Byman & Amunson 8-20-2020, \*senior fellow in the Center for Middle East Policy at Brookings, \*\*Analyst - U.S. Government. (Daniel L., Andrew, "Counterterrorism in a time of COVID", *Brookings*, https://www.brookings.edu/blog/order-from-chaos/2020/08/20/counterterrorism-in-a-time-of-covid/)

SILVER LININGS FOR COUNTERTERRORISM?

The challenges that COVID-19 poses for counterterrorism in the coming years are evident, if not entirely unique — yet some opportunities may also exist. For instance, information sharing and policy coordination among states on public health issues to help stem the pandemic may create more information, new means of sharing, and facilitate intra- and intergovernmental cooperation among regional and Western countries that could bolster counterterrorism efforts by improving travel monitoring and border control, for example. More broadly, the potential reduction in resources available for counterterrorism and shifting priorities will probably require reevaluating the efficacy and sustainability of various counterterrorism efforts, ranging from the use of military force to security-related foreign aid. Necessity may help drive regional cooperation and the development of sustainable, locally developed approaches to counterterrorism that are less dependent on the technical capabilities and sophisticated weapons systems provided by Western states.

### 2NC---AT: O-Crime

Alt causes to o-crime---myriad sources of funding and organization, drug sales, theft, cryptp

### 2NC---!D---Cyber

#### No cyber impact---that’s Lewis:

#### 1---deterrence---attacks would invite catastrophic retaliation---attribution is strong enough to deter escalation.

#### Uncertainty alone checks.

Lewis 18, PhD, a senior vice president at the Center for Strategic and International Studies (CSIS). (James Andrew, 1-1-2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States”, pg. 29, <https://www.jstor.org/stable/resrep22408.8?seq=1#metadata_info_tab_contents>)

This upper bound on cyber attack is affected by the likelihood of attribution. If an attacker was confident that it could avoid having the attack attributed to it, the risk of retaliation would be reduced, making some attacks more attractive. Uncertainty about attribution capabilities, particularly American capabilities, combined with uncertainty about the effectiveness of cyber attack, creates caution. Public expressions of uncertainty about attribution are not shared by opponents, who know when they have been caught. Over the last decade, the United States has made a major effort to improve its attribution capabilities and has succeeded to the point where no opponent can be confident about anonymity and this, if linked to truly credible threats to impose consequences, may finally produce the cyber deterrence so long sought by the United States.

The implicit threshold governing cyber attack is the line between force and coercion. With very few exceptions, states have avoided cyber actions that could be judged as the use of force, based on international understandings on what actions qualify as the use of force or armed attack. Opponents have engaged in cyber actions below this implicit threshold with impunity, but they are reluctant to cross it for fear of creating a situation that they cannot control. In this, cyber incidents are more like border incursions or bandit raids than attacks.

Public sources suggest that at least seven countries have used cyber tools for coercive purposes. However, they have been careful to avoid anything that could be interpreted as the use of force, and they have avoided physical destruction or casualties. This suggests that countries prefer actions that advance their strategic goals without creating unmanageable risk of escalation into armed conflict. Opponents calculate the advantage they would gain from an attack against the potential cost. Miscalculation is possible, but if anything, opponents appear more likely to overestimate the risk of retaliation.

#### 3---no motivation.

Lewis 18, PhD, a senior vice president at the Center for Strategic and International Studies (CSIS). (James Andrew, 1-1-2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States”, pg. 7-9, <https://www.jstor.org/stable/resrep22408.5?seq=1#metadata_info_tab_contents>) \*language edited---brackets

The most dangerous and damaging attacks required resources and engineering knowledge that are beyond the capabilities of nonstate actors, and those who possess such capabilities consider their use in the context of some larger strategy to achieve national goals. Precision and predictability—always desirable in offensive operations in order to provide assured effect and economy of force—suggest that the risk of collateral damage is smaller than we assume, and with this, so is the risk of indiscriminate or mass effect.

State Use of Cyber Attack Is Consistent with Larger Strategic Aims

Based on a review of state actions to date, cyber operations give countries a new way to implement existing policies rather than leading them to adopt new policy or strategies. State opponents use cyber techniques in ways consistent with their national strategies and objectives. But for now, cyber may be best explained as an addition to the existing portfolio of tools available to nations.

Cyber operations are ideal for achieving the strategic effect our opponents seek in this new environment. How nations use cyber techniques will be determined by their larger needs and interests, by their strategies, experience, and institutions, and by their tolerance for risk. Cyber operations provide unparalleled access to targets, and the only constraint on attackers is the risk of retaliation—a risk they manage by avoiding actions that would provoke a damaging response. This is done by staying below an implicit threshold on what can be considered the use of force in cyberspace.

The reality of cyber attack differs greatly from our fears. Analysts place a range of hypothetical threats, often accompanied by extreme consequences, before the public without considering the probability of occurrence or the likelihood that opponents will choose a course of action that does not advance their strategic aims and creates grave risk of damaging escalation. Our opponents’ goals are not to carry out a cyber 9/11. While there have been many opponent probes of critical infrastructure facilities in numerous countries, the number of malicious cyber actions that caused physical damage can be counted on one hand. While opponents have probed critical infrastructure networks, there is no indication that they are for the purposes of the kind of [devastating] crippling strategic attacks against critical infrastructure that dominated planning in the Second World War or the Cold War.

Similarly, the popular idea that opponents use cyber techniques to inflict cumulative economic harm is not supported by evidence. Economic warfare has always been part of conflict, but there are no examples of a country seeking to imperceptibly harm the economy of an opponent. The United States engaged in economic warfare during the Cold War, and still uses sanctions as a tool of foreign power, but few if any other nations do the same. The intent of cyber espionage is to gain market or technological advantage. Coercive actions against government agencies or companies are intended to intimidate. Terrorists do not seek to inflict economic damage. The difficulty of wreaking real harm on large, interconnected economies is usually ignored.

Economic warfare in cyberspace is ascribed to China, but China’s cyber doctrine has three elements: control of cyberspace to preserve party rule and political stability, espionage (both commercial and military), and preparation for disruptive acts to damage an opponent’s weapons, military information systems, and command and control. “Strategic” uses, such as striking civilian infrastructure in the opponent’s homeland, appear to be a lower priority and are an adjunct to nuclear strikes as part of China’s strategic deterrence. Chinese officials seem more concerned about accelerating China’s growth rather than some long-term effort to undermine the American economy.6 The 2015 agreement with the United States served Chinese interests by centralizing tasking authority in Beijing and ending People’s Liberation Army (PLA) “freelancing” against commercial targets.

The Russians specialize in coercion, financial crime, and creating harmful cognitive effect—the ability to manipulate emotions and decisionmaking. Under their 2010 military doctrine on disruptive information operations (part of what they call “New Generation Warfare”). Russians want confusion, not physical damage. Iran and North Korea use cyber actions against American banks or entertainment companies like Sony or the Sands Casino, but their goal is political coercion, not destruction.

None of these countries talk about death by 1000 cuts or attacking critical infrastructure to produce a cyber Pearl Harbor or any of the other scenarios that dominate the media. The few disruptive attacks on critical infrastructure have focused almost exclusively on the energy sector. Major financial institutions face a high degree of risk but in most cases, the attackers’ intent is to extract money. There have been cases of service disruption and data erasure, but these have been limited in scope. Denial-of-service attacks against banks impede services and may be costly to the targeted bank, but do not have a major effect on the national economy. In all of these actions, there is a line that countries have been unwilling to cross.

When our opponents decided to challenge American “hegemony,” they developed strategies to circumvent the risks of retaliation or escalation by ensuring that their actions stayed below the use-of-force threshold—an imprecise threshold, roughly defined by international law, but usually considered to involve actions that produce destruction or casualties. Almost all cyber attacks fall below this threshold, including, crime, espionage, and politically coercive acts. This explains why the decades-long quest to rebuild Cold War deterrence in cyberspace has been fruitless.

It also explains why we have not seen the dreaded cyber Pearl Harbor or other predicted catastrophes. Opponents are keenly aware that launching catastrophe brings with it immense risk of receiving catastrophe in return. States are the only actors who can carry out catastrophic cyber attacks and they are very unlikely to do so in a strategic environment that seeks to gain advantage without engaging in armed conflict. Decisions on targets and attack make sense only when embedded in their larger strategic calculations regarding how best to fight with the United States.

There have been thousands of incidents of cybercrime and cyber espionage, but only a handful of true attacks, where the intent was not to extract information or money, but to disrupt and, in a few cases, destroy. From these incidents, we can extract a more accurate picture of risk. The salient incidents are the cyber operations against Iran’s nuclear weapons facility (Stuxnet), Iran’s actions against Aramco and leading American banks, North Korean interference with Sony and with South Korean banks and television stations, and Russian actions against Estonia, Ukrainian power facilities, Canal 5 (television network in France), and the 2016 U.S. presidential elections. Cyber attacks are not random. All of these incidents have been part of larger geopolitical conflicts involving Iran, Korea, and the Ukraine, or Russia’s contest with the United States and NATO.

There are commonalities in each attack. All were undertaken by state actors or proxy forces to achieve the attacking state’s policy objectives. Only two caused tangible damage; the rest created coercive effect, intended to create confusion and psychological pressure through fear, uncertainty, and embarrassment. In no instance were there deaths or casualties. In two decades of cyber attacks, there has never been a single casualty. This alone should give pause to the doomsayers. Nor has there been widespread collateral damage.

### 2NC---!D---C2 Hacking

#### No nuclear hacking---US C2 is rigorously firewalled and isolated from other channels, making access impossible---two-person integrity and multi-layered safeguards prevent miscalc---that’s Caylor

#### Hacking impossible. Nukes aren’t online.

Fung 16, MSc, international relations. Reporter focusing on telecommunications, media, and competition. Citing Maj. General Jack Weinstein. (Brian, 5-26-2016, "The real reason America controls its nukes with ancient floppy disks", *Washington Post*, https://www.washingtonpost.com/news/the-switch/wp/2016/05/26/the-real-reason-america-controls-its-nukes-with-ancient-floppy-disks/)

As it happens, a similar logic underpins the U.S. military’s continued use of floppy disks. The fact that America’s nuclear forces are disconnected from digital networks actually acts as a buffer against hackers. As Maj. General Jack Weinstein told CBS’s “60 Minutes” in 2014: Jack Weinstein: I'll tell you, those older systems provide us some -- I will say huge safety when it comes to some cyber issues that we currently have in the world. Lesley Stahl: Now, explain that. Weinstein: A few years ago we did a complete analysis of our entire network. Cyber engineers found out that the system is extremely safe and extremely secure on the way it's developed. Stahl: Meaning that you're not up on the Internet kind of thing? Weinstein: We're not up on the Internet. Stahl: So did the cyber people recommend you keep it the way it is? Weinstein: For right now, yes. In other words, the rise of hackers and cyberwarfare is exactly why even technologically obsolete systems can still serve a valuable purpose.

#### Deterrence checks.

Lewis 18, PhD, a senior vice president at the Center for Strategic and International Studies (CSIS). (James Andrew, 1-1-2018, “Rethinking Cybersecurity: Strategy, Mass Effect, and States”, pg. 28-29, <https://www.jstor.org/stable/resrep22408.8?seq=1#metadata_info_tab_contents>) \*language edited---brackets

If it was possible to use a cyber attack to simultaneously [devastate] ~~cripple~~ strategic forces and launch a massive attack on critical infrastructure, an opponent might be tempted, but this would require a high degree of certainty that all strategic delivery systems could be taken offline by a cyber attack. This is unlikely, and it is more probable that a cyber attack will not be 100 percent effective. Some targeted weapons or systems will still operate. Saying that the United States can only shoot 50 missiles at your capital instead of 100 is not much of a comfort. In a larger armed conflict, this kind of reduction in enemy tactical capabilities can be valuable, but if the goal is to attack without fear of retaliation, it is insufficient.

### 2NC---!D---Grid Hacks

#### Grid is segmented---inserting a map.

Larson 19, Intel Analyst @ Dragos. (Selena, 4-3-2019, "Debunking the Hacker Hype: The Reality of Widespread Blackouts", Dragos, https://www.dragos.com/blog/industry-news/debunking-the-hacker-hype-the-reality-of-widespread-blackouts-rsa-2019-recap/)

Map

Description automatically generated

#### No impact – obstacles, warnings, and complexity

— assumes their warrants; regardless of impact, multiple checks

— attacks are improbable

— warming indicators detect attacks

— intelligence operations, hostile rhetoric, and increased probing are a precursor

— obstacles; resources, expertise, lack of intent

— AT: Terrorism!

Knake 17 – (Robert Kane Whitney Shepardson Senior Fellow. “A Cyberattack on the U.S. Power Grid,” CFR, 4/3/17. [https://www.cfr.org/report/cyberattack-us-power-grid D.A](https://www.cfr.org/report/cyberattack-us-power-grid%20D.A). 3/26/2021)

The U.S. power grid has long been considered a logical target for a major cyberattack. Besides the intrinsic importance of the power grid to a functioning U.S. society, all sixteen sectors of the U.S. economy deemed to make up the nation’s critical infrastructure rely on electricity. Disabling or otherwise interfering with the power grid in a significant way could thus seriously harm the United States. Carrying out a cyberattack that successfully disrupts grid operations would be extremely difficult but not impossible. Such an attack would require months of planning, significant resources, and a team with a broad range of expertise. Although cyberattacks by terrorist and criminal organizations cannot be ruled out, the capabilities necessary to mount a major operation against the U.S. power grid make potential state adversaries the principal threat. Attacks on power grids are no longer a theoretical concern. In 2015, an attacker took down parts of a power grid in Ukraine. Although attribution was not definitive, geopolitical circumstances and forensic evidence suggest Russian involvement. A year later, Russian hackers targeted a transmission level substation, blacking out part of Kiev. In 2014, Admiral Michael Rogers, director of the National Security Agency, testified before the U.S. Congress that China and a few other countries likely had the capability to shut down the U.S. power grid. Iran, as an emergent cyber actor, could acquire such capability. Rapid digitization combined with low levels of investment in cybersecurity and a weak regulatory regime suggest that the U.S. power system is as vulnerable—if not more vulnerable—to a cyberattack as systems in other parts of the world. An adversary with the capability to exploit vulnerabilities within the U.S. power grid might be motivated to carry out such an attack under a variety of circumstances. An attack on the power grid could be part of a coordinated military action, intended as a signaling mechanism during a crisis, or as a punitive measure in response to U.S. actions in some other arena. In each case, the United States should consider not only the potential damage and disruption caused by a cyberattack but also its broader effects on U.S. actions at the time it occurs. With respect to the former, a cyberattack could cause power losses in large portions of the United States that could last days in most places and up to several weeks in others. The economic costs would be substantial. As for the latter concern, the U.S. response or non-response could harm U.S. interests. Thus, the United States should take measures to prevent a cyberattack on its power grid and mitigate the potential harm should preventive efforts fail. The Contingency The U.S. power system has evolved into a highly complex enterprise: 3,300 utilities that work together to deliver power through 200,000 miles of high-voltage transmission lines; 55,000 substations; and 5.5 million miles of distribution lines that bring power to millions of homes and businesses. Any of the system’s principal elements––power generation, transmission, or distribution––could be targeted for a cyberattack. In the Ukraine case, attackers targeted substations that lower transmission voltages for distribution to consumers. Lloyd’s of London, an insurance underwriter, developed a plausible scenario for an attack on the Eastern Interconnection—one of the two major electrical grids in the continental United States—which services roughly half the country. The hypothetical attack targeted power generators to cause a blackout covering fifteen states and the District of Columbia, leaving ninety-three million people without power. Other experts have concluded that an attack on the system for transmitting power from generation to end consumers would have devastating consequences. In one scenario, disruption of just nine transformers could cause widespread outages. Many experts are now also concerned that smart grid technologies, which use the internet to connect to power meters and appliances, could allow an attacker to take over thousands—if not millions—of unprotected devices, preventing power from being delivered to end users. State actors are the most likely perpetrators of a power grid attack. Regardless of which part of the power grid is targeted, attackers would need to conduct extensive research, gain initial access to utility business networks (likely through spearphishing), work to move through the business networks to gain access to control systems, and then identify targeted systems and develop the capability to disable them. Such sophisticated actions would require extensive planning by an organization able to recruit and coordinate a team that has a broad set of capabilities and is willing to devote many months, if not years, to the effort. State actors, therefore, are the more likely perpetrators, and given these long lead times, U.S. adversaries have likely already begun this process in anticipation of conflict. It is doubtful that a terrorist organization would have both the intent and means to carry out such an attack successfully. In the future, however, criminal groups could pose a real threat. They are growing in sophistication and in some cases rival, if not exceed, the capabilities of nation states. Payments for ransomware—malicious software that encrypts data and will not provide a code to unlock it unless a ransom has been paid—by some estimates have topped $300 million. This funding could allow criminal groups to purchase more sophisticated capabilities to carry out the ultimate ransomware attack. The likelihood that an attack carried out by a determined and capable adversary would be thwarted by security measures is low. While some U.S. utilities might block attempts by an adversary to gain initial access or might be able to detect an adversary in their systems, many might not have the necessary tools in place to detect and respond. Efforts to improve data sharing that could enable detection by one company to block access across the entire industry are in their infancy. In the Lloyd’s scenario, only 10 percent of targeted generators needed to be taken down to cause a widespread blackout. Short of outright conflict with a state adversary, several plausible scenarios in which the U.S. power grid would be subject to cyberattack need to be considered: Discrediting Operations. Given the importance of electricity to the daily lives of Americans, an adversary may see advantage in disrupting service to undermine public support for a U.S. administration at a politically sensitive time. Distracting Operations. A state contemplating a diplomatic or military initiative likely to be opposed by the United States could carry out a cyberattack against the U.S. power grid that would distract the attention of the U.S. government and disrupt or delay its response. Given the fragility of many industrial control systems, even reconnaissance activity risks accidentally causing harm. Retaliatory Operations. In response to U.S. actions considered threatening by another state, such as the imposition of economic sanctions and various forms of political warfare, a cyberattack on the power grid could be carried out to punish the United States or intimidate it from taking further action with the implied threat of further damage. There are many plausible circumstances in which states that possess the capability to conduct cyberattacks on the U.S. power grid––principally Russia and China, and potentially Iran and North Korea––could contemplate such action for the reasons elaborated above. However, considerable potential exists to miscalculate both the impact of a cyberattack on the U.S. grid and how the U.S. government might respond. Attacks could easily inflict much greater damage than intended, in good part because the many health and safety systems that depend on electricity could fail as well, resulting in widespread injuries and fatalities. Given the fragility of many industrial control systems, even reconnaissance activity risks accidentally causing harm. An adversary could also underestimate the ability of the United States to attribute the source of a cyberattack, with important implications for what happens thereafter. Thus, an adversary’s expectations that it could attack the power grid anonymously and with impunity could be unfounded. Warning Indicators A series of warning indicators would likely foretell a cyberattack on the U.S. power grid. Potential indicators could include smaller test-run attacks outside the United States on systems that are used in the United States; intelligence collection that indicates an adversary is conducting reconnaissance or is in the planning stages; deterioration in relations leading to escalatory steps such as increased intelligence operations, hostile rhetoric, and recurring threats; and increased probing of electric sector networks and/or the implementation of malware that is detected by more sophisticated utilities.

#### No grid hacks.

Larson 16, Intel Analyst @ Dragos. (Selena, 8-6-2016, "Threats to Electric Grid are Real; Widespread Blackouts are Not", *Dragos*, https://www.dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/)

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos.

Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false.

The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE.

These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked.

Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent.

The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

Threats against the electric grid and other ICS industries continue to increase in both number and strength – for instance Dragos just publicly identified a new activity group engaging in electric utility information gathering – but the US is not on the precipice of a hacker-caused blackout.

### 2NC---!D---US-China War

#### Interdependence and MAD solve escalation.

Heath & Thompson 17, \*Timothy, senior international defense research analyst at the nonprofit, nonpartisan RAND Corporation and member of the Pardee RAND Graduate School faculty. \*\*William R., Distinguished and Rogers Professor at Indiana University and an adjunct researcher at RAND. (4-30-2017, "U.S.-China Tensions Are Unlikely to Lead to War", *National Interest*, https://nationalinterest.org/feature/us-china-tensions-are-unlikely-lead-war-20411?nopaging=1)

However, Allison ultimately fails to persuade because he fails to specify the political and strategic conditions that make war plausible in the first place. Allison’s analysis implies that the United States and China are in a situation analogous to that of the Soviet Union and the United States in the early 1960s. In the Cold War example, the two countries faced each other on a near-war footing and engaged in a bitter geostrategic and ideological struggle for supremacy. The two countries experienced a series of militarized crises and fought each other repeatedly through proxy wars. It was this broader context that made issues of misjudgment so dangerous in a crisis.

By contrast, the U.S.-China relationship today operates at a much lower level of hostility and threat. China and the United States may be experiencing an increase in tensions, but the two countries remain far from the bitter, acrimonious rivalry that defined the U.S.-Soviet relationship in the early 1960s. Neither Washington nor Beijing regards the other as its principal enemy. Today’s rivals may view each other warily as competitors and threats on some issues, but they also view each other as important trade partners and partners on some shared concerns, such as North Korea, as the recent summit between President Donald Trump and Chinese president Xi Jinping illustrated. The behavior of their respective militaries underscores the relatively restrained rivalry. The military competition between China and the United States may be growing, but it operates at a far lower level of intensity than the relentless arms racing that typified the U.S.-Soviet standoff. And unlike their Cold War counterparts, U.S. and Chinese militaries are not postured to fight each other in major wars. Moreover, polls show that the people of the two countries regard each other with mixed views—a considerable contrast from the hostile sentiment expressed by the U.S. and Soviet publics for each other. Lacking both preparations for major war and a constituency for conflict, leaders and bureaucracies in both countries have less incentive to misjudge crisis situations in favor of unwarranted escalation.

To the contrary, political leaders and bureaucracies currently face a strong incentive to find ways of defusing crises in a manner that avoids unwanted escalation. This inclination manifested itself in the EP-3 airplane collision off Hainan Island in 2001, and in subsequent incidents involving U.S. and Chinese ships and aircraft, such as the harassment of the USNS Impeccable in 2009. This does not mean that there is no risk, however. Indeed, the potential for a dangerous militarized crisis may be growing. Moreover, key political and geostrategic developments could shift the incentives for leaders in favor of more escalatory options in a crisis and thereby make Allison’s scenarios more plausible. Past precedents offer some insight into the types of developments that would most likely propel the U.S.-China relationship into a hostile, competitive one featuring an elevated risk of conflict.

The most important driver, as Allison recognizes, would be a growing parity between China and the United States as economic, technological and geostrategic leaders of the international system. The United States and China feature an increasing parity in the size of their economies, but the United States retains a considerable lead in virtually every other dimension of national power. The current U.S.-China rivalry is a regional one centered on the Asia-Pacific region, but it retains the considerable potential of escalating into a global, systemic competition down the road. A second important driver would be the mobilization of public opinion behind the view that the other country is a primary source of threat, thereby providing a stronger constituency for escalatory policies. A related development would be the formal designation by leaders in both capitals of the other country as a primary hostile threat and likely foe. These developments would most likely be fueled by a growing array of intractable disputes, and further accelerated by a serious militarized crisis. The cumulative effect would be the exacerbation of an antagonistic competitive rivalry, repeated and volatile militarized crisis, and heightened risk that any flashpoint could escalate rapidly to war—a relationship that would resemble the U.S.-Soviet relationship in the early 1960s.

Yet even if the relationship evolved towards a more hostile form of rivalry, unique features of the contemporary world suggest lessons drawn from the past may have limited applicability. Economic interdependence in the twenty-first century is much different and far more complex than in it was in the past. So is the lethality of weaponry available to the major powers. In the sixteenth century, armies fought with pikes, swords and primitive guns. In the twenty-first century, it is possible to eliminate all life on the planet in a full-bore nuclear exchange. These features likely affect the willingness of leaders to escalate in a crisis in a manner far differently than in past rivalries.

More broadly, Allison’s analysis about the “Thucydides Trap” may be criticized for exaggerating the risks of war. In his claims to identify a high propensity for war between “rising” and “ruling” countries, he fails to clarify those terms, and does not distinguish the more dangerous from the less volatile types of rivalries. Contests for supremacy over land regions, for example, have historically proven the most conflict-prone, while competition for supremacy over maritime regions has, by contrast, tended to be less lethal. Rivalries also wax and wane over time, with varying levels of risks of war. A more careful review of rivalries and their variety, duration and patterns of interaction suggests that although most wars involve rivalries, many rivals avoid going to war.

#### Interdependence, institutions, geography.

Shifrinson 19, assistant professor of international relations at Boston University. Joshua. (2/8/19, “The ‘new Cold War’ with China is way overblown. Here’s why.”, *Washington Post*, https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990.

But such concerns are overblown. Here are four big reasons why.

1. The historical backdrops of the two relationships are very different

When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links.

In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop.

2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe

The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons.

Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics.

Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert.

As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

### 2NC---!D---China Not Revisionist

#### China’s focus is on remedying domestic problems, not world domination.

Haass 20, President, Council on Foreign Relations. (Dr. Richard Haass, 5-11-2020, "A Cold War With China Would Be a Mistake", *Council on Foreign Relations*, https://www.cfr.org/article/cold-war-china-would-be-mistake)

These assessments overstate China’s ambitions and capabilities alike. China’s strategic preoccupation, as its 2019 defense white paper makes clear, is maintaining its territorial integrity and internal stability. Beijing fears that the success of any internal separatist movement would lead to others—and to the country’s unraveling, the Chinese Communist Party’s loss of power or both.

China can best be understood as a regional power that seeks to reduce U.S. influence in its backyard and to increase its influence with its neighbors. Beijing isn’t seeking to overturn the current world order but to increase its influence within it. Unlike the Soviet Union, China isn’t looking to impose its model on others around the globe or to control international politics in every corner of the world. And when China does reach farther afield, its instruments tend to be primarily economic.

China faces serious limitations in trying to extend its reach and influence. The era of double-digit Chinese economic growth is over. Chinese leader Xi Jinping’s consolidation of power leaves him vulnerable to challenge, not just from a slowing economy but also from policy blunders, such as his handling of Covid-19. China must deal as well with serious environmental problems and the looming demographic crisis of an aging and soon-to-shrink population. Arguments sounding the alarm about China’s world-dominating future should be taken with a healthy dose of salt.

# 1NR

#### Independent of war, ag decline kills billions

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

To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

#### Turns misinformation and terrorism

Lehane 17, is research manager for Future Directions International’s Global Food and Water Crises Research program. Her current research projects include Australia’s food system and water security in the Tibetan Plateau region. (Sinéad, 2-2-2017, Shaping Conflict in the 21st Century – The Future of Food and Water Security. www.hidropolitikakademi.org/shaping-conflict-in-the-21st-century-the-future-of-food-and-water-security.html)

In his book, The Coming Famine, Julian Cribb writes that the wars of the 21st century will involve failed states, rebellions, civil conflict, insurgencies and terrorism. All of these elements will be triggered by competition over dwindling resources, rather than global conflicts with clearly defined sides. More than 40 countries experienced civil unrest following the food price crisis in 2008. The rapid increase in grain prices and prevailing food insecurity in many states is linked to the outbreak of protests, food riots and the breakdown of governance. Widespread food insecurity is a driving factor in creating a disaffected population ripe for rebellion. Given the interconnectivity of food security and political stability, it is likely food will continue to act as a political stressor on regimes in the Middle East and elsewhere. Addressing Insecurity Improving food and water security and encouraging resource sharing is critical to creating a stable and secure global environment. While food and water shortages contribute to a rising cycle of violence, improving food and water security outcomes can trigger the opposite and reduce the potential for conflict. With the global population expected to reach 9 billion by 2040, the likelihood of conflict exacerbated by scarcity over the next century is growing. Conflict is likely to be driven by a number of factors and difficult to address through diplomacy or military force. Population pressures, changing weather, urbanization, migration, a loss of arable land and freshwater resources are just some of the multi-layered stressors present in many states. Future inter-state conflict will move further away from the traditional, clear lines of military conflict and more towards economic control and influence.

### AT Thumpers

It’s all priced in and the 2AC card only cites increased interest—ONLY actual policy this ev cites is tech which is already priced in

### AT Link turn

#### Also priced in

#### Squo disruption solves without privacy justification

Hirsh 21, a senior correspondent and deputy news editor at Foreign Policy. (Michael, 4-6-2021, "Big Talk on Big Tech—but Little Action", *Foreign Policy*, https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/)

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who famously claimed that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

#### Plan requires new resources have to be devoted— the plan adds a whole new pillar to the FTC’s prosecution of big tech—

#### New resources are key, 1AC ev—KU Yellow

1AC Jones & Kovacic 20 [Alison Jones\* and William E. Kovacic. Alison Jones, Professor of Law, King’s College London. William Kovacic. George Washington University, Washington DC, USA \*\*\* United Kingdom Competition and Markets Authority, United Kingdom. "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy." https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

The U.S. antitrust system is famous for its decentralization of the power to prosecute, giving many entities—public agencies (at both the federal and state levels), consumers, and businesses—competence to enforce the federal antitrust laws. The federal enforcement regime also coexists with state antitrust laws and with sectoral regulation, at the national and state levels, that includes a competition policy mandate.

The extraordinary decentralization and multiplicity of enforcement mechanisms supply valuable possibilities for experimentation and provide safeguards in case any single enforcement agent is disabled (e.g., due to capture, resource austerity, or corruption).146 Among public agencies, there is also the possibility that federal and state government institutions, while preserving the benefits of experimentation and redundancy, could improve performance through cooperation that allows them to perform tasks collectively that each could accomplish with great difficulty, or not at all, if they act in isolation. For models of successful interagency cooperation, one might study the successful policy integration that has taken place through the work of the United Kingdom Competition Network and the European Competition Network. In both examples, one can see the mix of organizational structures and personal leadership that enabled agencies collectively to accomplish policy results that would have been unattainable through the work of single agencies operating in isolation.

We doubt the ambitious litigation agenda demanded in the modern reform proposals is attainable if the public agencies adhere to traditional practices that overlook the expansion of outcome and increase in quality that superior interagency cooperation could generate. A suggested program of fuller integration would have the following elements.

1. Development of a Common Strategy

The path toward a major expansion of the existing litigation program will require careful planning that begins with the formulation of a joined-up strategy implemented harmoniously by the DOJ and FTC. The starting point for the common strategy is to map out the existing contours of doctrine, identify the high ground for intervention that modern jurisprudence has established, select projects to reshape doctrine and other elements of antitrust policy, allocate them to the best-placed agency to act and avoid duplication of resources on identical or overlapping investigations.

A second focal point in the analysis of the doctrinal status quo would be to consider how existing precedents can be employed to build successful cases and how doctrinal frontiers can be extended.147 An important element of this mapping exercise is to understand why the courts have embraced more permissive standards over the past four decades. This assessment would facilitate the preparation of effective arguments to persuade judges to rethink it. Among other effects, we anticipate that this inquiry will reveal how perspectives beyond the modern Chicago School have influenced judicial thinking. In particular, it will demonstrate how a number of jurists have abandoned a multidimensional goals framework in favor of an efficiency orientation out of concern for “administrability” considerations posed by the modern Harvard School of Phillip Areeda and Donald Turner. To gain the support of jurists such as Stephen Breyer (whose antitrust views bear the mark of Areeda’s influence), it will be necessary to show that the restoration of a new antitrust framework, or an egalitarian goals framework, would not lead to unpredictable and inconsistent litigation outcomes as each judge sought to weigh efficiency concerns or efficiency concerns alongside other values, such as preserving opportunities for small enterprises to compete.148

The third element of common strategy would be lessons derived from the examination of the agencies’ base of experience to determine what combination of policy tools—cases, studies, rules, advocacy—offer the best means to effectuate change in the market and to use this experience base to design specific remedies. Since its creation in 1890, the U.S. competition law system has generated a mass of information about the techniques for government intervention. As explained further below, the government’s “big antitrust data” can be mined to shed light on what is likely to work. For example, experience in implementing major structural remedies pursuant to decrees in Section 2 monopolization cases and by legislation such as the Public Utility Holding Company Act of 1935 offer important lessons about how to design and carry out the restructuring of major business enterprises.149

The study of past experience also reveals that it is a mistake, as part of a reform program, to focus all of an agency’s resources on the prosecution of big cases against big companies to the exclusion of smaller matters. The history of U.S. Section 2 enforcement shows that small cases can make big law by establishing doctrinal principles that support subsequent successful prosecutions of large enterprises.150

2. Project Selection Methodology

Project selection is the process by which an antitrust agency chooses the tools it will use to accomplish its policy aims. There is growing recognition among antitrust authorities that improvements in the methodology of project selection can strengthen the prospects of success for any single initiative. Adapted for the purpose of executing a major reform program, a good project selection methodology would pose a series of questions about every proposed initiative.151

First, what does the agency expect to achieve if the project succeeds? Will it improve economic conditions, realign doctrine, or both? By defining anticipated gains, the agency can better understand how many resources to commit to a specific measure and make a better informed decision about how much risk to accept. This inquiry also helps focus the agency’s attention, from the earliest days of the project’s preparation, on the design of remedies to cure apparent problems. The consideration of benefits to be attained and the means for realizing them can lead an agency to reflect carefully about whether the proposed project is the best way to solve the problem at hand. In some instances, a different sequence of initiatives may provide the best path to a solution—for example, to begin with a market study, and then bring cases based on the learning from the study.

Second, what risks does the project pose? How will a project failure—such as a litigation defeat—affect the market and the agency? Will the agency be able to sustain political support for its projects, or will the targets of intervention mobilize a political coalition to constrain the agency by, for example, curbing its authority or budget? To succeed, agencies must be mindful of the shifting sands in politics and be prepared with countermeasures to deal with situations where relevant politicians’ interests change and become more sympathetic to commercial interests. Important issues therefore will be whether current political supporters of reform have the staying power to back agencies for the five to ten years it might take to carry out cases successfully, what steps agencies can take to ensure sustained political support and to deal with swings in the political environment and whether financial support from the affected firms may be used to sway, or can be prevented from swaying, the political process and buckle political resolve.

Third, who will carry out the project? Which agency and does that agency have the talent available, or can it acquire needed talent in a timely manner, to perform the project successfully and overcome the opposition it will face where the agency seeks strong remedies for individual firms or entire sectors of the economy? A clear-headed answer to these questions helps avoid the creation of large gaps between the agency’s commitments and its ability to fulfill them in practice. Because it may be better attuned to the agency’s capabilities, a more gradual approach to rolling out a reform program may have better prospects for success than the launch of a number of large, complex cases all at the same time. One of the biggest hazards we see especially in the root-and-branch reform agenda is that it entails the rapid commencement of many ambitious projects that will place impossible demands on the capabilities of the antitrust agencies.

Fourth, what will the project cost be in terms of personnel and out-of-pocket expenditures for items such as expert witnesses to support cases? This inquiry helps the agency make a realistic prediction of the resources needed to carry out individual projects and prepare disciplined estimates for future budget requests.

How long will it take the agency to complete the project? This inquiry helps the agency determine whether its anticipated intervention and remedy will occur fast enough to solve an observed problem. If years may pass before the agency obtains a desired remedy at the conclusion of a lawsuit, it may be necessary to consider interim measures to correct the behavior that poses immediate competitive dangers if allowed to continue. By establishing an expected timetable at the outset, the agency equips its leadership with a valuable management tool to track a project’s progress.

How does the proposed project fit into the portfolio of the agency’s existing projects? If the agency examines each project in isolation, it can lose sight of the overall condition of its program portfolio. A portfolio-wide perspective enables the agency to assess the full range of risks it has assumed and, again, to see that it is achieving a good fit between its commitments and its capabilities.

How will the agency know that the project, if undertaken, is having its desired effects? It is a helpful exercise to identify how an agency’s intervention will bring about change in the market. What are the anticipated effects on prices, product quality, new business entry, or other economic conditions? When are these effects likely to become apparent? This exercise helps the agency develop realistic expectations about the magnitude and timing of anticipated benefits. From its past experience, the agency may be aware that some benefits may take years—perhaps decades—to become apparent.

The specification of performance benchmarks also plays a crucial role in facilitating the ex-post evaluation of outcomes. A very basic form of assessment is to compare the agency’s assumptions about a project when it begins with the knowledge it gains in the course of implementation. If anticipated performance falls below expectations (perhaps because a significant factor was overlooked), how can the project selection process be improved to account for the factor in the future? Taking careful stock of past measures that worked—and learning lessons from the failures—is a vital way to design new initiatives more effectively.

D. Enabling the FTC to Perform Its Intended Function

A number of the proposals for expansive reform would give the FTC a broader and fuller role in formulating competition policy. Several features of its original design make the Commission an attractive vehicle for carrying out a program of basic reforms. It has been seen that the FTC Act gives the Commission a broad, scalable mandate (Section 5’s prohibition on “unfair methods of competition”) to prohibit behavior not reached by existing interpretations of the Sherman and Clayton Acts. The agency also has expansive authority to collect information from firms through compulsory processes and to publish reports.152 The statute also intended that the Commission serve as a special resource to the DOJ and to the courts in formulating remedies in antitrust cases.153

Under the program of greater interagency cooperation we have proposed above, the FTC would use Section 5 of the FTC to seek to extend the boundaries of existing doctrine and to use its information gathering and reporting powers to set the empirical basis for proposed extensions. The starting point for this effort would be to examine the agency’s past (and rare) Section 5 litigation successes for lessons about how to gain judicial acceptance for an extension of antitrust doctrine.154 The Commission also would serve, in effect, as the main public agency resource on remedies. The agency would use its analytical resources and experience in evaluating the effectiveness of antitrust remedies to guide the formulation of remedies in the Sherman Act and Clayton Act cases, in addition to Section 5 cases. The agency would employ the large body of experience that the U.S. system and other systems have collected in the use of structural and behavioral remedies to suggest solutions in specific cases.

#### Requires tons of new info collection

1AC Jones & Kovacic 20 [Alison Jones\* and William E. Kovacic. Alison Jones, Professor of Law, King’s College London. William Kovacic. George Washington University, Washington DC, USA \*\*\* United Kingdom Competition and Markets Authority, United Kingdom. "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy." https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

In the United States, as in many other parts of the world, the pressure is on the competition agencies to make 2020, and the new decade, a period of sustained and effective antitrust action, targeting especially the business models of digital platforms. Pending any longer-term more fundamental reforms, many commentators are calling for immediate, rapid, and heightened competition scrutiny of a wide range of practices (including mergers (future and past), business practices of digital firms, restricted distribution and price setting practices) and the use of intrusive remedies to fix antitrust problems going forward.

These demands are imposing formidable expectations on the shoulders of competition agencies. Meeting them will not happen by chance or through a reactive and ad hoc approach. Indeed, without careful planning, an ambitious enforcement program involving a large number of complex litigations being pursued concurrently would risk agency managers and case handlers becoming overrun and the failure of the program. This paper consequently proposes a more tempered, gradual, and joined-up approach to reform, involving carefully constructed and coordinated strategies to overcome anticipated obstacles, painstaking planning and case allocation, and the selection of some initial complementary (but not overlapping) high-profile case prototypes for each agency to pursue before the program is expanded in steps.

Both federal agencies have investigative powers, but we propose that the FTC should make full use of its fact-finding powers to collect information on industries or sectors selected for investigation. Further, that before prosecutions are launched a methodology is followed for selecting appropriate cases for prosecution, taking account of past achievements and failures, the goal(s) to be achieved in bringing the case, the chance of success (especially given current doctrinal limitations), and opportunities for reshaping law and policy, the prospect for achieving those goals through antitrust action and remedies (rather than, for example, advocacy or other mechanisms), which agency is best placed to act, and whether that agency has the tools and staff available to take on the case now (taking account of other agency commitments). Essential to all of the proposals is a need for the agencies to anticipate and account for political backlash and for human capital in the agencies to be augmented. It will only be through recognizing the skills of existing staff and through finding realistic and achievable mechanisms to retain and recruit talented staff that the agencies will have the skill set diversity to take on sophisticated and powerful firms, backed by formidable teams of lawyers and experts.

### AT Winners win

1--- Doesn’t free up resources because courts don’t follow precedent  
AFJ 19, \*Alliance For Justice, a progressive judicial advocacy group in the United States; (August 16th, 2019, “So Long Stare Decisis”, https://www.afj.org/article/so-long-stare-decisis/)

The promise to respect and follow precedent – made by so many of our nation’s nominees to the federal bench – has turned out to be a flexible vow for many. Strikingly, the additions of Justices Gorsuch and Kavanaugh to the Supreme Court seem to have made the Roberts Court more determined than ever to do away with the pesky little hurdle responsible for keeping vital public protections in place: precedent. The influence of these new justices has only amplified the tendency of the Court’s longstanding precedent skeptic, Clarence Thomas, to attack precedents he dislikes.

Whether it’s overturning 40-plus years of precedent related to public unions, or the growing threats to overturn 40-plus years of abortion rights under Roe v. Wade, the current Supreme Court has apparently decided that precedent is, in fact, malleable when it needs to fit the justices’ ideological preferences.

This concerning trend, which was publicly highlighted during the 2018 Supreme Court term, is especially troubling as we look toward the future SCOTUS term and the wave of important, precedent-reliant issues coming before the Court to resolve. These include whether draconian abortion bans are unconstitutional and if Roe v. Wade should be [overturned](https://www.vox.com/2019/7/24/20708762/arkansas-abortion-news-roe-wade-supreme-court); whether the Affordable Care Act is [constitutional](https://www.cnn.com/2019/04/10/politics/obamacare-supreme-court-2020/index.html); whether localities can impose [gun control](https://www.washingtonpost.com/politics/courts_law/new-york-eased-gun-law-hopeful-supreme-court-would-drop-second-amendment-case--but-that-hasnt-happened-yet/2019/08/10/9031682e-bab6-11e9-a091-6a96e67d9cce_story.html) measures regarding transporting weapons; and whether major [environmental](https://www.citizen.org/litigation/county-of-maui-v-hawaii-wildlife-fund/) and [Native American land rights](https://www.motherjones.com/media/2019/07/the-history-behind-the-supreme-court-showdown-over-tribal-land-is-bloody-and-violent-for-rebecca-nagle-its-also-personal/) should be overturned.

The justices’ respect – professed vs. actual – for precedent could have enormous impacts on the rights we care most deeply about and fight to protect.

Precedent, and the accompanying legal doctrine of “stare decisis,” (which is a trying-too-hard-to-be fancy, Latin-turned-legal term [meaning](https://thelawdictionary.org/stare-decisis/): “to stand by decided cases; to uphold precedents; to maintain former adjudications”) is a longstanding principle in United States law.  The basic idea is that any legal argument a lawyer makes, and a court upholds, should mesh with established law and conform to prior judicial decisions on that law; generally, the older the precedent, the more the prior judicial holding tends to be respected and followed.

There seems to be a growing trend amongst the conservative majority of the Roberts Court: To get confirmed, ardently support the idea of upholding precedent; then, to achieve what the conservative apparatus who put you on the bench wants, bulldoze any precedent you don’t like.\\\

This practice isn’t terribly new for the Roberts Court: Prior to this term, the Court overturned decades of precedent in a variety of landmark cases, including: [Citizens United v. F.E.C.](https://scholar.google.com/scholar_case?case=14627663605033036164&q=Citizens+United+v.+F.E.C.&hl=en&as_sdt=20006) (2010) (overruling two key campaign finance precedents: [Austin v. Michigan Chamber of Commerce](https://scholar.google.com.br/scholar_case?case=3609582225306729508&q=Austin+v.+Michigan+Chamber+of+Commerce&hl=en&as_sdt=20006) (1990) and [McConnell v. Federal Election Commission](https://scholar.google.com.br/scholar_case?case=3309029737304712285&q=+McConnell+v.+Federal+Election+Commission&hl=en&as_sdt=20006) (2003)); Leegin Creative Leather Products v. PSKS, Inc. (2007) (overturning a 1911 anti-trust precedent in [Dr. Miles Medical Co. v. John D. Park & Sons Co.](https://scholar.google.com.br/scholar_case?case=3157705783244198338&q=dr.+miles&hl=en&as_sdt=20006)); and [Montejo v. Louisiana](https://scholar.google.com/scholar_case?case=17707055997036845959&q=Montejo+v.+Louisiana&hl=en&as_sdt=20006) (2009) (overturning a 1986 precedent regarding right to counsel established in [Michigan v. Jackson](https://scholar.google.com/scholar_case?case=13330333417461013941&q=michigan+v.+jackson&hl=en&as_sdt=20006)).

But the Roberts Court history of overturning precedent that doesn’t comport with its ideological agenda reached new heights during the 2018 SCOTUS term. For example, the Court overturned 40-plus years of precedent protecting public section unions in [Janus v. AFSCME](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf). The decision overruled [Abood v. Detroit Board of Education](https://scholar.google.com/scholar_case?case=5312655975467812361&q=City+of+Detroit+v.+Abood&hl=en&as_sdt=20006" \t "_blank) which for decades had allowed public sector unions to collect fees from public employees for the purposes of collective bargaining and enforcing fair, safe conditions in the workplace. As Justice Kagan [explained](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf) in her powerful dissent, “Abood is not just any precedent: It is embedded in the law.” Her [dissent](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf) highlighted the sinister underpinnings of the majority’s opinion in Janus: “The majority overthrows a decision entrenched in this Nation’s law— and in its economic life—for over 40 years.” Kagan also powerfully highlighted how the “majority overruled Abood for no exceptional or special reason, but because it never liked the decision. It has overruled Abood because it wanted to.”

Then came the 2019 Supreme Court session, when Justice Brett Kavanaugh joined the bench after a confirmation process riddled with controversy, sexual assault claims, and threats of future political reprisal. Once again, the conservative majority freely thumbed their noses at precedent when it didn’t fit their ideological agendas. For example, Justice Thomas wrote the majority opinion in [Franchise Tax Bd. of Cal. v. Hyatt](https://scholar.google.com/scholar_case?case=13817744485807572486&q=Franchise+Tax+Board+of+California+v.+Hyatt&hl=en&as_sdt=20006&as_ylo=2019&as_vis=1) to overrule 40 years of precedent regarding when a state can be sued in another state. In his dissent, Justice Breyer argued that it is “dangerous to overrule a decision only because five Members of a later Court come to agree with earlier dissenters on a difficult legal question” and prophetically suggested how the “decision can only cause one to wonder which cases the Court will overrule next.”

And sure enough, a little over one month later in [Knick v. Township of Scott, Pennsylvania](https://scholar.google.com/scholar_case?case=6821535153814213570&q=Knick+v.+township+of+scott&hl=en&as_sdt=20006&as_ylo=2019&as_vis=1), the majority overruled 34 years of precedent to hold that litigants who allege local takings of their property by the state do not need to first bring their claim in a state court.  Justice Kagan, once again assuming the role of precedent-bodyguard, powerfully dissented from the majority’s trampling of decades-old precedent: “The majority today holds, in conflict with precedent after precedent, that a government violates the Constitution whenever it takes property without advance compensation—no matter how good its commitment to pay… it transgresses all usual principles of stare decisis.”

#### 2--- Treading on new turf magnifies the link---the agency will take time AND money to develop new proficiencies

Seth B. **Sacher &** John M. **Yun 19**, Sacher is an Economist, Washington, DC; Yun is from the Antonin Scalia Law School, George Mason University, “TWELVE FALLACIES OF THE "NEO-ANTITRUST" MOVEMENT,” 26 Geo. Mason L. Rev. 1491, 1493, Summer 2019, Lexis

VII. Fallacy Seven: Not Recognizing That Their Proposals Will Strain Competition Agency Resources, Increase Uncertainty, and Make These Agencies More Political and Subject to Capture Most of those that have worked within, or before, the antitrust agencies, despite their inevitable disagreement with certain actions or policies, are generally very impressed with the high degree of skill, professionalism, and dedication exhibited by the career staff. As will be discussed more fully in the [\*1515] context of Fallacy XI below, many proponents of neo-antitrust do not accept the proposition that the antitrust agencies and their staffs function relatively well, in spite of the views of many (on all sides of the political spectrum) who have had experience working within or before the antitrust agencies. Regardless of how neo-antitrust proponents view the agencies, many of their proposals run a serious risk of **adversely affecting competition agency performance**. There are a number of objective reasons to expect antitrust agencies to function **relatively well**. First, antitrust agencies tend to be **small** relative to many other regulatory agencies and bureaucracies in general. Second, their staffs tend to be highly **trained professionals**, consisting primarily of lawyers and Ph.D. economists. Third, they have a **well-defined objective** (i.e., the consumer welfare standard or some similar standard based on economic reasoning, such as the total welfare standard). Finally, although antitrust is considered a form of regulation, it is distinct from other forms of regulation in that it does not involve a **continuing relationship** between the regulated firms and the regulator. As a goal, antitrust seeks to **enable markets** to more nearly achieve certain social objectives on their own. First, advocates of **neo-antitrust** would like to see the responsibilities of the antitrust agencies **expanded** in a number of ways. This includes more aggressively **enforcing** **existing** antitrust laws, as well as the consideration of **issues** **beyond** those currently **within that purview**. Further, many of their proposals, such as requiring **data sharing**, **monitoring markets** to prevent tipping, or approving platforms' **algorithm changes**, will require significantly more **active market supervision** than is currently the case. While many [\*1516] proponents of modern antitrust would agree that the antitrust agencies are underfunded, there is certainly a point at which expanding the antitrust agencies will have **"bureaucratic" diseconomies of scale**. Fully following the recommendations of neo-antitrust advocates could very well require many antitrust agencies to **expand beyond some critical point**, which will inevitably lead to significantly **larger bureaucracies** and **associated inefficiencies**.

#### Second part of this arg is HC enforcement fails now—false:

### 1NR---AT: Overstretch inevitable

#### Healthcare funding sufficient 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.

#### Solves.

LaPointe 21 (Jacqueline, “How Policy, Regulation Will Challenge Consolidation in Healthcare,” Recycle Intelligence, https://revcycleintelligence.com/news/how-policy-regulation-will-challenge-consolidation-in-healthcare)

However, the executive order has some serious implications for healthcare organizations—and not just hospitals and health systems—looking to join forces with others in their market. RevCycleIntelligence spoke with industry experts to learn what healthcare leaders need to know about the executive order and how it will impact consolidation in healthcare moving forward. WHAT WILL BE DIFFERENT? Antitrust enforcement should continue to be top of mind for hospital and health system leaders engaging in merger and acquisitions deals. But now more than ever, leaders should know that just because a deal passes the first hurdle does not mean it is out of the woods yet. “Hospital leaders should be mindful that the agencies can challenge consummated transactions at any time,” says Ken Vorrasi, antitrust litigation partner at Faegre Drinker. “They shouldn't take solace in the fact that they've received front-end Hart-Scott-Rodino clearance. In reviewing past transactions, the agencies—the FTC or state attorney general—could issue subpoenas and ask about price changes, what costs have been cut, what efficiencies have been realized, what quality benefits there are, and try to do an assessment as to whether or not the transaction was pro-competitive for insurers and patients or not.” The executive order highlights the FTC’s ability to challenge healthcare merger and acquisition deals that were not previously challenged by an administration. Prior to this order, the FTC has also recently revamped its Merger Retrospective Program to expand and formalize retrospective analyses of consummated mergers, including those in healthcare. But most notably, the FTC has unraveled a healthcare deal successfully in the past. In 2004, the FTC challenges Evanston Northwestern Healthcare Corporation's acquisition of Highland Park Hospital and eventually ordered a restoration of the competition lost as a result of the acquisition. This type of challenge is rare but could become more common. "It is fair to say that an action like that one is more realistic and likely today than it was before the executive order and the new antitrust leadership," Vorrasi stated. READ MORE: Rapid Pace of Health System Consolidation to Continue, Experts Say “Healthcare leaders also need to be mindful of the impact and assessing the risk with their transactions that are vertical in nature, whether upstream or downstream, because those transactions have the attention of the agencies as well.” While much attention has been paid to antitrust review of health system and hospital mergers, healthcare leaders should also not forget about vertical integration. “We’re going to see more scrutiny in these areas, particularly with the new vertical merger guidelines the FTC and DOJ issued in 2020. That is certainly top of mind to the FTC and the FTC has substantial experience with hospital-physician consolidation and continues to actively study its effects on competition and quality,” Vorrasi said.

#### High enforcement prioritization chills consolidation

LaPointe 21 (Jacqueline, “How Policy, Regulation Will Challenge Consolidation in Healthcare,” Recycle Intelligence, https://revcycleintelligence.com/news/how-policy-regulation-will-challenge-consolidation-in-healthcare)

Healthcare mergers and acquisitions have promised to bring lower costs, higher quality, and better access to care. But a new executive order is challenging the rapid pace of consolidation in healthcare, directing policy and regulation to put a chill on deals the administration feels are harmful to patients.

#### Consolidation wrecks affordable quality health care provision---antitrust enforcement solves

Karas 21, Dr., JD Candidate @ Harvard (Laura, “Is It Time to Reverse Health System Consolidation?,” <https://blog.petrieflom.law.harvard.edu/2021/04/08/is-it-time-to-reverse-health-system-consolidation/>)

Concentrated corporate power poses an obstacle to the provision of affordable health care across the state of Massachusetts. In particular, a few large hospital systems wield monopoly power to maintain supracompetitive hospital prices. Is it time to consider breaking up large health systems? Health care expenditures per capita in Massachusetts have been among the highest in the nation, and until recently, total health care spending growth in Massachusetts exceeded national averages. Though Massachusetts boasts the highest rate of health insurance coverage in the country, recent research demonstrates that health care remains unaffordable for a substantial proportion of Massachusetts residents. And the state’s near-3% rate of uninsurance masks variation across counties; “hot-spot” communities composed of lower-income residents, many of whom are young adults and noncitizens, experience higher rates of uninsurance. Hospital consolidation has played a role in maintaining unaffordable health care prices, fueling health care spending growth, and compromising equitable health care provision in Massachusetts (and across the United States). What, if anything, should be done in response? I consider this question and discuss recent antitrust investigations and actions against the Commonwealth’s behemoth health care providers. Confronting the Problem of Hospital Prices Drug manufacturers continue to come under scrutiny for “price gouging” the American public with high pharmaceutical drug prices, whereas hospital prices have tended to attract less attention. Relative inattention to hospital spending and hospital prices is a mistake. Hospital care and physician services comprise the bulk of U.S. health care spending, and the link between provider consolidation and higher prices is well established. Hospital prices traditionally have been enshrouded in secrecy, though the CMS final rule mandating hospital price transparency that took effect January 1, 2021, aims to change that. Hospital expenditures grew at a faster rate in 2019 (6.2%) than did physician expenditures (4.6%) and retail prescription drugs (5.7%). And the COVID-19 pandemic is likely to boost hospital expenditures even higher in the near term and drive further provider consolidation. Outpatient volume remains depressed below pre-pandemic levels, placing pressure on outpatient providers to close or consolidate. A 2019 Health Affairs article reported that growth in hospital prices outpaced growth in physician prices in recent years for common, high-volume services such as C-sections and knee replacements, leading the authors to suggest that that “there may be significant differences in the bargaining leverage of hospitals and physicians,” and that “policymakers should devote more of their efforts to addressing growth of hospital prices.” Blocked Merger Attempts and Price Caps: Are They Enough? Partners HealthCare, recently renamed Mass General Brigham in a costly and criticized rebranding effort, is the Commonwealth’s preeminent health care provider. It resulted from the merger of Massachusetts General Hospital and the Brigham and Women’s Hospital — previously considered “fierce rivals” — in 1994. Partners’ domination of the market for health care provision in Massachusetts should give ordinary citizens and regulators pause. And indeed it has. In 2009, the Massachusetts Attorney General’s Office (AGO) began an investigation into deals between Partners HealthCare and Blue Cross Blue Shield of Massachusetts that increased prices paid to Partners’ physicians and hospitals, an investigation apparently prompted by Boston Globe reporting. In 2010, the Department of Justice announced its investigation into Partners HealthCare for potential Sherman Act violations based on the health system’s contracting practices with health insurers like Blue Cross Blue Shield and others. Later, in 2015, a Massachusetts Superior Court rejected a settlement between Partners HealthCare and the Massachusetts AGO to put in place conduct remedies for Partners’ proposed acquisition of South Shore Hospital, leading the two health systems to terminate their merger plans. The decision warned: [T]he settlement, if adopted by this Court, would cement Partners’ already strong position in the health care market and give it the ability, because of this market muscle, to exact higher prices from insurers . . . . These Partners-driven increases in costs are estimated by an independent state agency, the Massachusetts Health Policy Commission (HPC), to amount to tens of millions of dollars a year. . . . The Proposed Consent Judgment . . . does not reasonably or adequately address the harm that is almost certain to occur as a consequence of the anticompetitive conduct by Partners . . . . Concerns regarding Partners’ market position and market power remain. Yet, little has been done to address its market dominance. To be sure, the Massachusetts Health Policy Commission, the Massachusetts AGO, and federal agencies like FTC and DOJ continue to examine hospital mergers in Massachusetts. But the merger of Beth Israel Deaconess Medical Center and Lahey Health System was allowed to proceed in 2018, despite research from the Massachusetts Health Policy Commission finding that the merger will likely result in “significant price increases.” Specifically, the final report from the Massachusetts Health Policy Commission on the proposed merger of Beth Israel Deaconess and Lahey Health noted the following: After the transaction, [Beth Israel Lahey Health]’s market share would nearly equal that of Partners HealthCare System, market concentration would increase substantially, and [Beth Israel Lahey Health] would have significantly enhanced bargaining leverage with commercial payers[,] . . . enabl[ing] it to substantially increase commercial prices that could increase total health care spending by an estimated $128.4 million to $170.8 million annually for inpatient, outpatient, and adult primary care services. . . . These figures are likely to be conservative. In this particular case, the Massachusetts AGO imposed a seven-year price constraint and secured commitments from the merging entities for capital investment in safety net affiliates that serve underserved communities in Massachusetts. But, temporarily slowing price growth while permitting consolidation may not be enough. Professors Clark Havighurst and Barak Richman have called “monopoly power in the hands not only of nonprofit hospitals but also of other providers or suppliers of health services or products . . . more, not just equally, harmful to both consumers and the general welfare than monopolies of other kinds” (emphasis added). Elsewhere, Richman has called “health sector concentration combined with health insurance . . . cause for particular alarm,” and has explained that promises of charitable investment — such as that secured from Beth Israel Lahey Health — should not be viewed favorably in the antitrust analysis. Charity amounts to “a common tactic to solicit community support and judicial sympathy, even though [it] reduce[s] the efficiency of health care investments and further damage[s] the market for health care services.” Richman has encouraged courts to view assurances of research and charity as “reason[s] to oppose, not support, the mergers.” Are Health Systems Becoming “Too Big to Fail”? The newly rebranded Mass General Brigham seeks to become “the premier integrated healthcare system of the future.” But will the lofty and aspirational “integrated health system of the future” also be one that possesses unbridled power set to prices, ultimately driving unsustainable spending and health care inequities that deprive some residents of health care access and many more of affordable care? Bigger doesn’t always mean better. But bigger health systems will mean higher prices. The provider consolidation that Mass General Brigham and Beth Israel Lahey Health exemplify is reminiscent of the consolidated power of financial institutions that later required government bailout in the 2007-08 financial crisis. As former Chairman of the Federal Reserve Alan Greenspan famously stated, and as others have echoed, “if they’re too big to fail, they’re too big.” Maybe the time has come to reverse provider consolidation in Massachusetts (and elsewhere, since, to be sure, the trend toward health system consolidation has been occurring nationwide and is predicted to continue post-pandemic). If the goal really is affordable health care, then it might be time to break up the large hospital systems and find ways to achieve integration of services and efficiencies across health systems without common corporate ownership.

### AT Covid

#### US Ag is on the brink

FA 20 (Farm Aid, “Understanding the Economic Crisis Family Farms are Facing,” <https://www.farmaid.org/blog/fact-sheet/understanding-economic-crisis-family-farms-are-facing/>)

Faced with multiple years of losses that have whittled away equity, many farmers are making hard choices. Many are selling off land, livestock or equipment in an effort to hold on. Others are finding off-farm jobs to supplement farm income, only to see those jobs go away. Some farmers are choosing to retire early, while others are declaring bankruptcy in an effort to keep their farm. These tough choices are raising concerns that we are on the cusp of a slow but huge wave of farm losses not seen since the 1980s. Chapter 12 bankruptcy was created during the 1980s Farm Crisis specifically for family farmers and fisherman and offers one indicator of extreme stress in the farm sector. Because most farmers who are in crisis do not end up filing a Chapter 12, bankruptcy data is really just the tip of the iceberg that contains much larger number of farms in crisis. By June 2020, Chapter 12 bankruptcy filings totaled 580, representing an 8% rise from June 2019 levels.[25] The largest increases in bankruptcies came from the Midwest (23%), Northwest (70%) and Southeast (22%), with more than half of filings occurring in the Midwest alone over the last year. Wisconsin, the country’s second largest dairy state, had the country’s highest number of Chapter 12 filings (69) between July 2019 and June 2020, followed by Nebraska (38), Georgia (36), Minnesota (36), Iowa (33) and Kansas (32). In total, 23 states saw bankruptcy filings rise over the last 12 months, with the biggest increases occurring in Wisconsin, Oregon and Iowa.[26]

### AT Other thumpers

#### Quality and available health care key to food supply

CHQPR 21, Center for Healthcare Quality and Payment Reform, national policy center that facilitates improvements in healthcare payment and delivery systems. Founded in 2008, CHQPR is an internationally-recognized source of unbiased information and assistance on payment and delivery reform. CHQPR’s publications are among the most widely used and highly regarded resources on payment reform in the world. CHQPR has provided information and technical assistance to Congress, federal agencies, national organizations, and to physicians, hospitals, employers, health plans, and government agencies in nearly every state in the U.S. and several other countries to help them design and implement successful payment and delivery system reforms(<https://ruralhospitals.chqpr.org/Importance.html>)

The Importance of Rural Hospitals to the Rest of the Country

The more than 1,600 small rural hospitals represent over one-third of the total hospitals in the country. However, most people have never seen one of them in person because most people don’t live in the rural counties they serve. In fact, the majority of the nation’s population lives in a relatively small number of urban counties, and most of those counties are many miles away from the communities served by rural hospitals. Should residents of urban areas care what happens to hospitals in small, distant rural communities? The answer is yes, for several reasons: Food Supply. Most of the nation’s food supply comes from rural communities

because of the large amounts of land needed to grow crops and raise cattle. Rural hospitals provide healthcare services to the owners and workers on the farms and ranches in these areas, to the owners and workers at the businesses that supply the farms and ranches, and also to their family members. Most of these hospitals are small because of the low population densities in agricultural areas. 38% of agricultural crops are produced in counties in which the only hospitals are small rural hospitals. An additional 5% of crops come from counties that have no hospital at all and the closest hospital is a small rural hospital in another county.15 48% of the country’s production of animals for food occurs in counties in which the only hospitals are small rural hospitals. An additional 6% are in counties that have no hospital at all and the closest hospital is a small rural hospital in another county. Energy Production. Rural communities are home to most of the nation’s coal mining and gas and oil production, as well as wind farms and solar energy facilities. Almost 40% of those communities rely on small rural hospitals for healthcare services. 33% of the country’s mining and oil and gas production occurs in counties in which the only hospitals are small rural hospitals. An additional 6% of fossil fuel production comes from counties that have no hospital at all and the closest hospital is a small rural hospital.16 Source: 2017 Census of Agriculture, BEA 2018 Gross Domestic Product by County, CMS Provider of Services Files. “Close to Small” means the county has no hospital and the closest hospital is a small rural hospital. Recreation and Tourism. Many popular recreation, historical, and tourist sites are located in rural areas. If visitors to these sites have accidents or health problems that require medical treatment, their initial care will often be provided by a small rural hospital. For example, the top 10 most-visited National Parks, including the Grand Canyon, Yosemite, and Yellowstone, had almost 50 million visits in 2019, and all are located in rural areas.17 In most of them, the closest hospital to at least one of the entrances and visitor centers at the Park was a small, rural hospital. In half of the parks, the closest hospital to all of the entrances and visitor centers at the Park was a small, rural hospital, while the closest large hospital was over 75 minutes away in the majority of cases.18 Shipping and Other Travel. Interstate highways connect the nation’s urban areas to each other, to the nation’s agricultural areas, and to recreation sites, and they pass through rural areas to do so. A trucker, traveler, or tourist who has an accident or medical problem on an interstate highway is likely to depend on a small rural hospital located near a highway interchange for emergency care. The coronavirus pandemic in 2020 made many city dwellers realize for the first time how dependent they are on rural communities for their food supply and how much that supply could be affected by health problems in rural communities.19 The pandemic has also made healthy individuals all across the country realize how important it is to have hospitals with adequate capacity, not only where they live or work, but where they might be quarantined during travel.

#### Collapse of rural health care causes devastatingly high food prices

Alemian 16, Vice President - Capital Crest Financial Group (David, “Rural Healthcare Is a Matter of National Security,” *MD Magazine*, <https://www.hcplive.com/view/rural-healthcare-is-a-matter-of-national-security>)

Rural health organizations are already struggling with enormous turnover rates and costs that run up into the millions of dollars each year. The additional financial burden of penalties from Medicare and Medicaid will put many rural health organizations at risk of going out of business. If too many rural health organizations go out of business, it then becomes a matter of national security and here’s why: In most rural communities, the healthcare organization is the largest employer. When the largest employer goes out of business, the community collapses and people move away. What was once a thriving community then becomes a ghost town. Rural America produces the food that feeds the rest of the country. What will happen when our amber waves of grain turn to desert wastelands because there is no one to work our great farmlands? As the source of food dries up, and store shelves empty, the price of food will go through the roof. As food prices go up, hyperinflation will become a reality, and our printed money will become worthless. Almost overnight, Americans will begin to go hungry because they won’t be able to afford to put food on the table.

#### Heightened health care costs devastate US ag

Wakefield 17

Jeffrey Wakefield (staff writer). “Health insurance costs threaten farm viability.” Originally from University of Vermont, released on Science Daily. July 18th, 2017. <https://www.sciencedaily.com/releases/2017/07/170718221859.htm>

According to a new U.S. Department of Agriculture-funded study, lack of access to affordable health insurance is one of the most significant concerns facing American farmers, an overlooked risk factor that affects their ability to run a successful enterprise. "The rising cost of healthcare and the availability of affordable health insurance have joined more traditional risk factors like access to capital, credit and land as a major source of worry for farmers," said principal investigator Shoshanah Inwood, a rural sociologist at the University of Vermont, who conducted the study with colleagues at the Walsh Center for Rural Health Analysis at NORC at the University of Chicago. "The study found that health-related costs are a cross-sector risk for agriculture, tied to farm risk management, productivity, health, retirement, the need for off-farm income and land access for young and beginning farmers," said Alana Knudson, co-director of the NORC Walsh Center. Study results were based on a March 2017 mail survey of farmers and ranchers in 10 study states and interviews with farm families in each of the study states in 2016. Three of four farmers and ranchers (73 percent) in the survey said that having affordable health insurance was an important or very important means of reducing their business risk. And just over half (52 percent) are not confident they could pay the costs of a major illness such as a heart attack, cancer or loss of limb without going into debt. Insights from the interviews supported the survey results. "During the course of interviews with farmers, many relayed stories about their family members or neighbors who had lost their farms or dairies due to catastrophic illness or injury when they were uninsured," Knudson said. Sixty-four percent report having pre-existing conditions To meet the needs of farmers, changes in current health insurance law will need to be carefully considered, the survey suggests. Two out of three farmers and ranchers (64 percent) reported having a pre-existing health condition. With an average age of 58, farmers and ranchers are also vulnerable to higher insurance premiums due to age-rating bands. And among farmers and ranchers 18 to 64 years old, one out of four (24 percent) purchased a plan in their state's insurance marketplace. "A number of farmers in their 50s we spoke with said they had left off-farm employment in the last five years to commit to full-time farming because they and their families would not be denied health insurance in the individual market due to pre-existing conditions," Knudson said. Health Insurance costs create barriers for young and beginning farmers Health care costs also factor into farm succession issues, potentially denying young people access to land to farm. Almost half (45 percent) of the farmers surveyed said they're concerned they will have to sell some or all of their farm or ranch assets to address health related costs such as long-term care, nursing home or in-home health assistance. "These findings indicated that many farmers will need to sell their land, their most valuable asset, to the highest bidder when they need cash to cover health-related costs," Inwood said, "making it more difficult for young farmers to afford land and increasing the likelihood farmland is sold for commercial development." Lack of access to affordable health insurance could potentially drive young people away from farming, the research found. Young farmers who had taken advantage of the Medicaid expansion in their states said told the researchers in interviews that it allowed them to provide health insurance for their children and have time and energy to invest in the farm or ranch rather than having to seek a full-time off-farm or ranch job with benefits. Most farm families have health insurance, over half through public sector employment The vast majority of farmers and ranchers (92 percent) reported that they and their families had health insurance in 2016 but that it frequently came from off-farm employment. Over half (59 percent) of farm and ranch families received benefits through public sector employers (health, education and government). "Public sector jobs, especially in rural areas often offer the highest wages and most generous benefits," Inwood said. "Changes in public and private sector employment options or benefits affect the financial stability and social well-being of farm families with impacts reverberating through rural communities." Nearly three quarters say USDA should represent farmer interests Given the pressing nature of their health insurance concerns, farmers are also seeking help from the federal government. Nearly three quarters (73 percent) of farmers said USDA should represent farmers' needs in national health policy discussions, particularly due to unique health needs of farmers and farm workers (e.g., coverage for blood tests to examine potential pesticide exposures). The timing is right, Inwood said, the five-year update of the U.S. Farm Bill is due in 2018. The comprehensive Farm Bill deals with agriculture and all other issues under the jurisdiction of the USDA. "We have a shrinking and aging farm population," Inwood said. "The next Farm Bill is an opportunity to start thinking about how health insurance affects the trajectory of farms in the United States." Nothing is more important to the country's food system than the viability of the farm sector, she said. "It's a matter of national security," she said. For the study, a total of 1,062 farmers and ranchers were surveyed in March 2017 in Vermont, Massachusetts, Pennsylvania, Michigan, Nebraska, Mississippi, Kentucky, Washington, Utah and California. Study states were selected in each of the four Census regions and included a mix of those that had expanded or not expanded Medicaid. The study results were also based on interviews of up to 10 families in each of the study states.

#### Rural health care is key to all rural vitality, including ag

Baresky 20, 20 years of experience as a healthcare industry executive marketing leader, content strategist and content writer (John, “RURAL HOSPITALS NEED A CURE FAST,” https://jgb7908.medium.com/rural-hospitals-need-a-cure-fast-155f309ff64f)

Key benefits of rural hospitals

Frequently overlooked, rural hospitals are a pivotal component of our national healthcare system. They do not have the size and scope of services provided by mid-sized hospitals or hospitals aligned with healthcare systems or academic/university hospitals. Regardless of size, their place in the U.S. healthcare system is essential for many reasons: Rural hospitals provide routine and emergency access to care for farmers and their families, the core source of our national food supply, plus their nearby communities When patient loads peak, as seen in the COVID-19 pandemic, rural hospitals can absorb some of the patient load so larger facilities are less overwhelmed Rural hospitals serve as business catalysts in the communities they serve that attract new residents and add vitality to the local economy Besides conventional hospital care, rural hospitals are the champions behind the local business, school, church and other community health and wellness initiatives such as screenings, smoking cessation groups, drug and alcohol addiction awareness, pre and postnatal wellness for mothers and infants plus other programs.

### 1NR---AT: !D---Food Wars

#### Yes impact to food insecurity. Regional instability can be causally attributed to reliable food supplies---solves instability, mass migration, diplomatic and economic relationships that would otherwise cause escalation spirals---that’s Castellaw.

#### Food wars go nuclear—expert and studies are all neg

FDI 12Future Directions International. “International Conflict Triggers and Potential Conflict Points Resulting from Food and Water Insecurity.” May 25th, 2012. http://futuredirections.org.au/wp-content/uploads/2012/05/Workshop\_Report\_-\_Intl\_Conflict\_Triggers\_-\_May\_25.pdf

There is little dispute that conflict can lead to food and water crises. This paper will consider parts of the world, however, where food and water insecurity can be the cause of conflict and, at worst, result in war. While dealing predominately with food and water issues, the paper also recognises the nexus that exists between food and water and energy security. There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. Page 9 of 22 In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict

. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### US shocks cause extinction –causes global conflict and destabilizes international order

DoCampo 17 [Isabel DoCampo joined the Council's Global Food and Agriculture Program in 2015 and currently serves as a research associate. Previously, she has conducted research for Vivo en Positivo, a Bolivian HIV organization, and served as a fellow for the Project on International Peace and Security, through which she presented a policy brief regarding epidemic security at the National Press Club in Washington, DC. DoCampo holds a BA in international relations with a minor in public health from the College of William and Mary 2-8-2017 https://www.thechicagocouncil.org/blog/global-food-thought/food-secure-future-warding-instability-and-conflict]

Food Insecurity and Price Shocks can Spark Violence and Political Instability

We have learned time and again that food supply shocks—like food price spikes—lead to instability, violence, and even regime collapse. In 2007 and 2008, when global food prices spiked dramatically, the governments of Haiti and Madagascar fell in the wake of food price-related protests. In 2010 and 2011, food prices were again implicated in the destabilizing uprisings of the Arab Spring. More recently, severe food shortages and soaring inflation have sparked rioting and lootings throughout Venezuela, as 90 percent of Venezuelan families struggle to afford food.

Council research has found that food price-related unrest occurs most often in urban areas, particularly in low- and middle-income countries. Africa and Asia, where rates of undernourishment are high and rates of urbanization are higher, housed 28 of the 29 riots that occurred during the food price spikes in 2007-2008 and 2010-2011. In developing cities on these continents, impoverished urban dwellers may spend up to 50 percent of their incomes on food. Additionally, food supplies in these cities many be tenuous—either dependent on food imports or domestic production vulnerable to external shocks. As such, urban consumers in low- and middle-income countries may face chronic food insecurity, significant food price volatility, and little ability to absorb price shocks—these factors all contribute to the likelihood of rioting and unrest in urban areas plagued by hunger crises.

Rural citizens—though they aren’t able to mobilize as readily as their urban counterparts—are deeply impacted by instability in agricultural markets and chronic food insecurity. Rural communities depend on stable food prices, sufficient agricultural inputs, and fair agrarian policy to sustain their livelihoods. In their absence, rural residents may be more likely to engage in civil unrest. The Revolutionary Armed Forces of Colombia (FARC)—which concluded peace negotiations with the government in December after a bloody, 52-year conflict—was formed by disenfranchised rural communities, who had suffered from a collapse in agricultural markets and a lack of agrarian reform. FARC continued to recruit poor, rural people throughout its insurgency.

Food Insecurity is a Powerful Driver for Migration

Food insecurity is not only a potential driver of conflict, but it can also spur large-scale migration. The World Food Programme and the International Organization for Migration first identified this relationship in the migratory patterns of subsistence farmers and households impacted by drought in El Salvador, Guatemala, and Honduras in 2014. They found that food insecurity proved a significant factor in decisions to migrate, particularly to the United States, while violence may have also played a less consistent role in outward migration from the region.

This is a phenomenon we, sadly, see playing out today across the Middle East and sub-Saharan Africa. In South Sudan, where nearly one third of the population is in need of emergency food assistance as a result of civil war, 450,000 people have left the country since July 2016. Conflict in Syria, meanwhile, has decimated agricultural production, destroying agricultural infrastructure and disrupting food supply chains. With little ability to generate livelihood or secure sufficient food, many farmers and rural households have had no choice but to migrate. Those that have fled to refugee camps in the region continue to face hunger as funding cuts have restricted the ability of organizations like WFP and UNHCR to supply sufficient rations and aid; many refugees have chosen to migrate farther, to Europe in many cases, in response.

Food Security Promotes International Security

The impacts of food insecurity, especially when they provoke instability and unrest, reach well beyond national borders. When food insecurity topples governments, the international order is invariably altered and regions are destabilized. When food insecurity forces migration across regions, or continents, international relations are strained, public services are weakened, and families are torn apart.

These are lessons, however, that are too often employed in hindsight. In Cameroon, the United Nations Development Programme has begun to provide agricultural inputs and training to youth, who, without economic alternative, were being recruited to Boko Haram. The Colombian government incorporated agricultural development and rural poverty reduction measures into its peace treaty with FARC, having completed its first rural census in 45 years in 2015.

We all have enormous stake in ensuring the food security of individuals and communities around the world—in providing both consumers and producers with the resilience to withstand shocks from climate, conflict, or any extreme conditions. We have the opportunity, now, to do so before further instability threatens our collective welfare. Otherwise, we will continue to face new iterations of the challenges we see today: deeply entrenched conflict, widespread migration, and unimaginable human suffering.

# 2NR

#### Rulemaking will be struck down OR deterred by legal challenges.

Helgi **Walker 21**, partner in Gibson, Dunn & Crutcher's Washington, D.C. office, JD from the University of Virginia, 7/9/2021, “President Signs Executive Order Directing Agencies to Address Wide Range of Businesses’ Competitive Practices, Including Non-Compete Agreements,” <https://www.gibsondunn.com/president-signs-executive-order-directing-agencies-to-address-wide-range-of-businesses-competitive-practices-including-non-compete-agreements/>

**Expansive rulemaking** could also expose the FTC to **legal challenges** under the constitutional “**nondelegation doctrine**,” which limits the extent to which Congress may delegate **lawmaking power** to **administrative agencies**.  Although the **nondelegation** doctrine has seldom been invoked by the Supreme Court since the New Deal Era, in 2019 five **Supreme Court** justices expressed interest in **reviving** the **doctrine**.[[7]](https://www.gibsondunn.com/president-signs-executive-order-directing-agencies-to-address-wide-range-of-businesses-competitive-practices-including-non-compete-agreements/" \l "_ftn6" \t "_blank)  Those five justices constitute a majority of the current **Supreme Court**.  The FTC Act, which **delegates** to the FTC the authority to regulate “**unfair**” behavior, may be susceptible to a **challenge** on the grounds that Congress must provide concrete guidance to **cabin** the FTC’s **exercise** of its **delegated power**.

#### FTC adds nothing:

#### 1. Poor appointments, politicization, and overlapping authority. Their argument lacks any empirical support.

**Wright 12** [Joshua D. Wright, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” <https://www.law.gmu.edu/assets/files/publications/working_papers/1303DoExpertAgenciesOutperform.pdf>]

In the context of US antitrust law, many commentators have recently called for an expansion of the Federal Trade Commission’s (FTC’s) adjudicatory decision-making authority pursuant to Section 5 of the FTC Act, increased rulemaking, and carving out exceptions for the agency from increased burdens of production facing private plaintiffs. These claims are often expressly grounded in the assertion that expert agencies generate higher quality decisions than federal district court judges. We call this assertion the expertise hypothesis and attempt to test it. The relevant question is whether the expert inputs available to generalist federal district court judges translate to higher quality outputs and better performance than the Commission produces in its role as an adjudicatory decision-maker. While many appear to assume agencies have courts beat on this margin, to our knowledge, this oft-cited reason to increase the discretion of agencies and the deference afforded them by reviewing courts is void of empirical support. Contrary to the expertise **hypothesis**, we find evidence suggesting the Commission **does not** **perform** as well as **generalist judges** in its adjudicatory antitrust decision-making role. Furthermore, while the available evidence is more limited, there is no clear evidence the Commission adds significant incremental value to the administrative law judge decisions it reviews. In light of these findings, we conclude there is **little empirical basis** for the various proposals to expand agency authority and **deference** to **agency decisions**. More generally, our results highlight the need for research on the relationship between institutional design and agency expertise in the antitrust context. I have never heard anyone argue that [the FTC] has displayed superior expertise to the courts when it comes to deciding antitrust cases.1 Introduction Governments and scholars have been increasingly willing to evaluate the performance of their competition and consumer protection agencies worldwide. Within the last few years alone, China,2 India,3 Brazil,4 and the European Union5 have undergone substantial institutional restructuring aimed at improving agency performance. At the same time, antitrust scholars have recently increased their focus upon the structure of competition enforcement institutions, giving rise to a burgeoning body of scholarly work.6 One critical dimension of the **institutional design** **research** agenda is how decision-making ought to be delegated between courts and agencies to best achieve the goals of competition policy. While antitrust scholars have long focused upon the importance of errors and the design of substantive legal rules to minimize error costs, relatively little attention has been paid to the myriad ways in which institutional design in general, and decision-making within expert competition agencies specifically, can improve the quality of these institutions. The organization of leadership and staff within a competition agency affects the structure of the decision-making process it undertakes. For example, the number of **economists**, the **quality** of their inputs, and the **nature** of their authority within a **competition agency** could affect agency **enforcement decisions**.7 Indeed, throughout its history the Federal Trade Commission (FTC) has experimented with various organizational designs in hopes of incorporating the optimal level of economic influence to achieve the agency’s goals.8 Similarly, the European Commission (EC) has responded to calls for more coherent economic analysis through the addition of a team of PhD economists to aid the EC’s Competition Directorate in improving its decision-making quality.9 The institutional design literature has identified a number of potential factors influencing decision-making, including whether the agency should be led by a single director or a collegiate body,10 the experience held by agency heads,11 the structure of enforcement,12 and methods of ensuring transparency in agency decision-making.13 There is no debate that theoretical potential for superior agency performance lies in its ability to harness its expertise. In practice, however, there is also little doubt that the observed design and structure of competition agencies in the USA bears little resemblance to the theoretical optimum. Holding aside the obvious and oft-discussed **inefficiencies** of multiple **overlapping** competition agencies, there appear to be other **fundamental** **structural impediments** to optimal **agency performance**. To take but one example, former FTC Chairman William Kovacic has written at length about the **disappointing** overall quality of **appointments** of FTC **commissioners**.14 While Congress envisioned a Commission comprising lawyers, business managers, and economists with superior achievements and substantial, diverse experience,15 what it got was—in no small part due to political interference16—a history and pattern of appointments evidencing a systematic **fail**ure to meet **those expectations**.17 Obviously, this is not to say that those appointed to lead the FTC are not talented professionals; it simply means the historic composition of the Commission has failed to encompass the qualities necessary to make it the leading authority in US antitrust law.18 Predicate to the question of precisely how to design competition agencies to improve their performance is the issue of precisely what locus of authority should be allocated to the expert agency. The answer to that question lies at the heart of many antitrust debates. Dissatisfied with recent changes in Sherman Act jurisprudence, some commentators have called for a shift in responsibility for shaping antitrust law from the courts to the agencies, reasserting the original vision of the FTC as an expert agency.19 A recurring and related issue in the debate over an expanded role for enforcement agencies—especially the FTC—in antitrust decision-making is whether Article III courts are sufficiently equipped to handle complex antitrust cases.20 Evidence indicates that complex antitrust cases involve economic analysis that is sometimes too complicated for courts to consistently decide properly.21 This is due in large part to the fact that courts are unable (some suggest unwilling22) to incorporate expert economic analysis into their antitrust decisions. Some commentators have argued, based upon courts’ imperfect decision-making abilities, that the FTC should have greater decision-making authority to offset courts’ shortcomings in understanding the complex economic analysis required to accurately assess modern antitrust issues.23 Which institution is better equipped to analyse complex modern antitrust cases? The debate is occasionally framed in unfair terms. There is no doubt the agency comprises antitrust and economic experts well equipped to analyse all modes of business dealings; in this sense, agencies certainly have greater economic expertise than the Article III judges as a general rule. But neither the **expert economists** in the Bureau of Economics nor the Bureau of Competition’s **lawyers** make **decisions** for the agency. Both ultimately provide inputs to the **five-person** **Commission** in a **complex** **decision-making** process. Economic and legal expertise are not the only **inputs**. Commissioners are political **appointees** that may or **may not begin** their terms with substantial **antitrust experience**.24 As the ultimate decision-makers in administrative litigation, the Commission is the body to which relevant analytical information must be transmitted. Comparing the expert Commission staff to combined expertise of the Article III judge and his law clerks is not the appropriate comparison; it also misses the point.25 The issue remains whether the expert inputs available to the Commission’s decision-makers manifest themselves in the context of administrative decision-making compared to generalist judges.

#### 2. The only scholarly attempt to empirically analyze comparative expertise utterly debunks their argument.

Joshua D. **Wright 12**, Professor, George Mason University School of Law and Department of Economics. “DO EXPERT AGENCIES OUTPERFORM GENERALIST JUDGES? SOME PRELIMINARY EVIDENCE FROM THE FEDERAL TRADE COMMISSION,” <https://www.law.gmu.edu/assets/files/publications/working_papers/1303DoExpertAgenciesOutperform.pdf>

Our goal is to provide some empirical evidence testing the expertise hypothesis, namely, that expert agency decision-making will be superior to decision-making by generalist judges. Advocates have relied upon the expertise hypothesis to justify increased delegations of power to administrative agencies and increased judicial deference to those agencies’ decisions. In the antitrust context specifically, the expertise hypothesis has provided the primary intellectual basis for arguments for aggressive and expansive use of the FTC’s Section 5 authority outside the bounds of the Sherman Act,57 agency rulemaking,58 and increased deference to FTC decisions in federal court.59 We are not aware of any empirical studies comparing the relative performance of judges and agencies; there is, however, a relatively small but growing literature focusing upon the relationship between judicial specialization and performance.60 We test the expertise hypothesis by way of comparing the adjudicatory decisions of two different sets of decision-makers. We first compare the decisions of federal district court judges and FTC Commissioners. This comparison has a number of intuitively appealing features. First, both sets of decisions are appealed to federal courts of appeals. Second, most variants of the expertise hypothesis in the competition context appear to have precisely this comparison in mind.61 Congress intended and designed the FTC to be an expert agency with specialized knowledge and resources unavailable to generalist judges; it is that expertise and specialized knowledge that Congress and proponents of the expertise hypothesis presume will increase the quality of inputs into the Commissioners’ decision-making processes and thus also increase the quality of the outputs. Third, the Commission reviews ALJ decisions de novo, and thus its own decisions, like the district courts, are not bound by prior fact-finding.62 Comparison of judicial and Commission decisions allows a fairly intuitive and direct test of the expertise hypothesis. This comparison also suffers from some important limitations. Perhaps the most important is that Commission decisions are afforded greater deference than district court decisions by federal courts of appeal on review.63 Furthermore, cases come to the Commission after a full administrative trial. While the Commission need not afford ALJ decisions significant deference, the fact that cases must go through a full trial before they can be appealed to the Commission, and perhaps ultimately to a federal court of appeals, is an important difference between the two sets of decisions. Administrative cases in which defendants are willing to incur the costs of a full administrative trial and Commission review, including the costs of delay, may be systematically more likely to contain reversible error than federal district court decisions in the sample. Our second comparison takes a different approach, ignoring federal court decisions and focusing upon differences between ALJ and Commission decisions. The intuition of this approach is to try to estimate the ‘marginal product’ of Commission decision-making. We attempt to isolate the incremental impact of Commission input into the agency decision-making relative to ALJ decision-making without Commission input. Put simply, our sample ofResults In this section, we present simple differences in means followed by probit regression analysis for each of our two comparisons. Federal Trade Commissioners versus Generalist Judges Means comparisons We begin with some simple comparisons of the means to explore the differences in the appeal rates for Commission decisions and Article III judicial decisions. Figure 1 reports the results. Aside from including the appeal rate for the Article III judges and the Commissioners, the appeal rate for the Article III judges, conditional on the plaintiff winning, is also included. In our sample, cases decided by the Commission are 14 per cent more likely to be appealed than are cases decided by Article II judges. The difference is statistically significant at the 5 per cent level. The contrast between the Commission’s appeal rate and the Article III judges’ appeal rate conditional on the plaintiff winning the Article III case is greater and more statistically significant than the unconditional comparison. **Commission decisions are 27 per cent more likely to be appealed than are the conditional cases by the Article III judges**. The difference is statistically significant at the 1 per cent level and, in practical terms, quite large. The parties involved in FTC litigation are 25 per cent more likely to be disgruntled enough to appeal their case to the circuit court of appeals. Figure 2 compares Commission appeal rates with those of Article III judges with basic economic training. LEC-trained judges’ opinions are appealed at arate 5 percentage points lower than the decisions of their untrained Article III colleagues and a full 19 percentage points less frequently than those of the Commission. This difference is statistically significant at the 1 per cent level. One important difference between Commission decisions and decisions authored by district court judges is that, as discussed above, the Commission’s de novo review takes place after a full administrative trial in front an ALJ. Thus, it might be the case that different stages of factual development drive differences in appeal rates. For a preliminary examination of this possibility, reports appeal rates of Commissioners and Article III judges in antitrust cases conditioned upon limiting the judicial sample to decisions at or after the summary judgment stage. Judicial appeal rates are only 8 percentage points lower than the Commission’s, and the difference is not statistically significant. While we prefer comparisons based upon appeals rather than reversals, we note that we obtain similar, though less drastic, results when we use reversals. Figure 4 shows that Commission opinions are reversed 20 per cent of the time and decisions by Article III judges are reversed only 5 per cent of the time. The Article III judges’ reversal rate is nearly identical to a subset of Article III judge decisions conditional on the plaintiff winning at trial. This 15 per cent point difference is statistically significant at the 1 per cent level. Figures 5 and 6 report comparative reversal rates when we condition judicial reversal rates on economic training and decisions at or after the summary judgment stage. The differences remain stable at approximately 15 per cent; judicial reversal rates are substantially lower, providing some preliminary evidence contrary to the expertise hypothesis. The difference is statistically significant at the 1 per cent level. These means comparisons provide preliminary evidence suggesting the Commission’s decisions are more likely to be appealed and reversed than those of Article III generalist judges. Taken at face value, the comparison implies that on this particular margin of performance—adjudicatory decision-making— Commissioners do not perform as well as district court generalists. However, these differences in appeal and reversal rates may be the result of omitted variables or sample selection. In the next section, we use a probit regression framework to control for other factors that may reasonably influence the appeal and reversal rates of the Commission and Article III judges.