# 1NC

## Off-Case

### 1NC---T

T: PRIVATE SECTOR

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

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

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

#### TVA: any universally applied standard, like CWS (Consumer Welfare Standard)

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

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

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

#### Vote neg:

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

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

### 1NC---T

#### New affs are a voter---pre round research is key to education and fairness. Justifies infinite condo.

#### Interpretation: team must disclose the 1ac after pairings.

### 1NC---CP

#### Plan: The United States federal government should:

#### 1---cooperate globally on active debris removal by creating a list of space debris available for salvage.

#### 2---initiate global arms control negotiations in space

#### 3---reduce its space weaponization

#### The counterpplan solves---it enables the U.S. and Russia to license commercial operators to remediate debris.

James A. Vedda, 17, a senior policy analyst performing policy research and evaluation for various government agencies “Orbital Debris Remediation Through International Engagement”, <https://aerospace.org/sites/default/files/2018-05/DebrisRemediation.pdf>

Possible Solutions For a long time, the conventional wisdom was that small debris should be the primary objective for cleanup because it exists in very large numbers, it can’t be tracked, and it’s capable of doing considerable damage. But cleaning up the small stuff was a challenge with no feasible technical solutions on the horizon. Meanwhile, dead satellites and rocket bodies were seen as presenting a lesser threat because they could be tracked and avoided, so retrieval was a lower priority. This view was changing even before the 2009 Iridium-Cosmos incident as the population of derelict spacecraft and the As retrieval becomes feasible, it may be preferred over the practice of routinely maneuvering satellites out of the way of debris in an environment of increasing traffic… 6 likelihood of collision in orbit increased. With development of retrieval capabilities, the old logic reverses: nonfunctional satellites and rocket bodies can be tracked, intercepted, grappled, and removed from orbit before they are impacted and become thousands of pieces of untrackable debris. As retrieval becomes feasible, it may be preferred over the practice of routinely maneuvering satellites out of the way of debris in an environment of increasing traffic. Government and/or commercial entities contemplating retrieval operations must be able to choose their objectives well in advance. If this involves seeking permission on a case-by-case basis from foreign governments, without the benefit of established procedures, it will be an expensive and time-consuming process that is likely to limit the available objects and undermine the already fragile economics of this activity. If the parties to the OST continue to object to any attempts to update its language, then no remedy will be available in the OST’s amendment process to accommodate a modern approach to salvage in space. Fortunately, a remedy may be available under the Registration Convention.20 Article IV requires signatories to provide a basic set of information to a U.N. registry soon after the launch of a space object. It also requires notification when an object is no longer in space, having been deorbited or otherwise removed. There is no requirement to report anything about the object during the time between its placement in space and its removal. But although it’s not required, signatories may provide input during the on-orbit life of a space object. Article IV states, in part: Each State of registry may, from time to time, provide the Secretary-General of the United Nations with additional information concerning a space object carried on its registry. The nature of the “additional information” is not specified in the Convention, but it could include notification that an object, though still in orbit, is no longer functioning and is not expected to be reactivated. Another possibility is that an active satellite could change ownership through a commercial or intergovernmental transaction, transferring the responsibility for that satellite to another nation. If the Convention’s signatories agree that action is needed to enable debris cleanup, they could create a separate category in the registry for expired satellites and rocket bodies, labeling them “available for salvage.” To date, expended hardware has been allowed to remain in orbit for many years, posing a collision hazard and fragmentation risk. As remediation techniques become available, signatories could be encouraged to put their space objects on the “available for salvage” list as they expire. In doing so, they would signal that “if you haul it away, it’s yours” but would retain ownership responsibilities until a successful retrieval mission was performed. If an object is salvaged, then the original owner is relieved of responsibility (and potential liability) for that object; if no retrieval is attempted, the outcome is no different than under the current treaty regime. More detailed considerations would need to be worked out as this process is established: At what point are ownership and liability transferred to the salvager (e.g., first contact in orbit; completion of retrieval mission)? If the Text of Article VIII of the Outer Space Treaty A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return. [emphasis added] 7 salvager is a private entity, how and when is treaty responsibility transferred to the salvager’s country? Is this accomplished by prior arrangement between countries? How should it be reflected in the private entity’s license and/or contract? The salvage list should be open to all interested parties. Governments and commercial entities willing and able to attempt retrievals should be encouraged to report in advance any intended retrievals to avoid conflicts between pursuers of the same object. Salvage objectives should not be “reserved” for a particular operator—at least, not until a retrieval mission is underway—because this could lead to a situation similar to the “paper satellites” problem at the International Telecommunication Union, in which reservations are granted for actions that will never be completed. Launching states would be under no obligation to put their satellites on the salvage list. Sensitive national security assets, or satellites that the launching state intends to retrieve or service itself, would retain the traditional space object ownership status. However, launching states that own objects on the high-priority retrieval list (i.e., mass and probability of collision are relatively high) should be encouraged by COPUOS or some other appropriate body to make them available for salvage. The Registration Convention does not have as many adherents as the OST, but still covers the majority of space actors. (The only OST signatories with noteworthy space activities that are absent from the Convention are Luxembourg—a supporter of space servicing that is home to two large commercial satellite fleet operators—and Israel.)21 If the signatories support this new procedure in the interest of promoting debris cleanup, and experienced spacefaring nations like the U.S. and Russia set an example by making their expired satellites available, then the ownership problem is solved and salvage in space is enabled without amending the OST. But there still remains the perception that debris remediation is a cover for ASAT capabilities.

### 1NC---CP

Regulation CP:

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by expanding regulatory constraints on Outer Space Treaty.

#### That solves and competes

Shelanski 18, Professor of Law at Georgetown (Howard Shelanski, 2018, “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

### 1NC---DA

#### Law Enforcement Tradeoff DA

#### Antitrust law enforcement has two areas of focus now: health care and big tech.

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.

#### 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 M and A 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.

### 1NC---K

CAP K:

#### The aff is strengthens free markets and saves capitalism by upholding competition

Parakkal & Bartz-Marvez 13, \*\*Assistant Professor of International Relations, Philadelphia University \*\*Visiting Assistant Professor, Department of Economics, University of Miami (\*Raju Parakkal \*\*Sherry Bartz-Marvez, 2013, “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.

#### Capitalism causes extinction ⁠— climate change, nuclear war, democratic collapse, extreme inequality, disease, prison-industrial complex, and perpetual exploitation of the Global South; it’s try-or-die for a transition

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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.

#### Racial capitalism outweighs ⁠— the current system necessitates super-exploitation of the Global South, colonial dispossession, militaristic imperialism, and racial hierarchies to sustain itself; the system must be rejected on ethical grounds

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Drawing on the intellectual production of twentieth-century Black anticapitalists, I theorize modern U.S. racial capitalism as a racially hierarchical political economy constituting war and militarism, imperialist accumulation, expropriation by domination, and labor superexploitation.14 The racial here specifically refers to Blackness, defined as African descendants’ relationship to the capitalist mode of production—their structural location—and the condition, status, and material realities emanating therefrom.15 It is out of this structural location that the irresolvable contradiction of value minus worth arises. Stated differently, Blackness is a capacious category of surplus value extraction essential to an array of political-economic functions, including accumulation, disaccumulation, debt, planned obsolescence, and absorption of the burdens of economic crises.16 At the same time, Blackness is the quintessential condition of disposability, expendability, and devalorization.

Footnote 14: Another feature of modern U.S. racial capitalism is property by dispossession. In Theft Is Property! Dispossession and Critical Theory, Robert Nichols draws on the experience of Indigenous peoples in the United States, Canada, and New Zealand to theorize how the “system of landed property” was fundamentally predicated on violent dispossession. While the Anglo-derived legal-political regimes differed in these localities, the “intertwined and co-constitutive” material effects converged in the legalized theft of indigenous territory amounting in “approximately 6 percent of the total land on the surface of Earth.” Such dispossession, Nichols notes, is recursive: “In a standard formulation one would assume that ‘property’ is logically, chronologically, and normatively prior to ‘theft.’ However, in this (colonial) context, theft is the mechanism and means by which property is generated: hence its recursivity. Recursive dispossession is effectively a form of property-generating theft.” As such, theft and dispossession, through property regimes, are an ongoing feature of the Indigenous reality of modern U.S. racial capitalism. Robert Nichols, Theft Is Property! Dispossession and Critical Theory (Durham: Duke University Press, 2020), 50–51.

Footnote 15: Borrowing from Karl Marx’s dictum that the labor process is the hidden abode of the capitalist production of value, and Nancy Fraser’s conceptualization of reproduction as the even more hidden abode, or background condition, for the possibility of capitalist production, I understand Blackness as the obfuscated abode. The immense value of Blackness is obscured and rendered unintelligible by its positioning as worthlessness, as something that does not amount to anything—but that does not equal nothing. As a structural location at the intersection of indispensability and disposability, Blackness exceeds the category of race, is not reducible to class, and does not fit the specifications of caste.

My operationalization of capitalism follows Oliver Cromwell Cox’s explication in Capitalism and American Leadership.17 Modern U.S. racial capitalism arose in the context of the First World War, when, as Cox explains, the United States took advantage of the conflict to capture the markets of South America, Asia, and Africa for its “over-expanded capacity.”18 Cox further expounds upon this auspicious moment of ascendant modern U.S. racial capitalism thus: By 1914, the United States had brought its superb natural resources within reach of intensive exploitation. Under the stimulus of its foreign-trade outlets, the financial assistance of the older capitalist nations, and a flexible system of protective tariffs, the nation developed a magnificent work of transportation and communication so that its mines, factories, and farms became integrated into an effectively producing organism having easy access to its seaports.… [Likewise,] further internal expansion depended upon far greater emphasis on an ever widening foreign commerce.… Major entrepreneurs of the United States proceeded to step up their campaign for expansion abroad. The war accentuated this movement. It accelerated the growth of [modern] American [racial] capitalism and impressed upon its leaders as nothing had before the need for external markets.19 Relatedly, Peter James Hudson argues that the First World War fundamentally changed the terms of order of international finance, allowing New York to compete with London, Paris, and Berlin for the first time in the realm of global banking. This was not least because the Great War “drastically reordered global credit flows,” with the United States transforming from a debtor into a creditor nation.20 In addition to Latin American and Caribbean nations and businesses turning to the United States for financing and credit, domestic saving and investment patterns were altered to the benefit of imperial financial institutions like the City Bank.21 Although the United States is, to use Cox’s terminology, more a “lusty child of an already highly developed capitalism” than an exceptional capitalist power, the nation perfected its techniques of accumulation through its vast natural wealth, large domestic market, imbalance of Northern and Southern economies, and, importantly, through its lack of concern for the political and economic welfare of the overwhelming masses of its population, least of all the descendants of the enslaved.22 Modern U.S. racial capitalism is thus sustained by military expenditure, the maintenance of an extremely low standard of living in “dependent” countries, and the domestic superexploitation of Black toilers and laborers. Cox notes that Black labor has been the “chief human factor” in wealth production; as such, “the dominant economic class has always been at the motivating center of the spreads of racial antagonism. This is to be expected since the economic content of the antagonism, especially at its proliferating source in the South, has been precisely that of labor-capital relations.”23 In a general sense, racial capitalism in the United States constitutes “a peculiar variant of capitalist production” in which Blackness expresses a structural location at the bottom of the labor hierarchy characterized by depressed wages, working conditions, job opportunities, and widespread exclusion from labor unions.24 Furthermore, modern U.S. racial capitalism is rooted in the imbrication of anti-Blackness and antiradicalism. Anti-Blackness describes the reduction of Blackness to a category of abjection and subjection through narrations of absolute biological or cultural difference; ruling-class monopolization of political power; negative and derogatory mass media propaganda; the ascent of discriminatory legislation that maintains and reinscribes inequality, not least various modes of segregation; and social relations in which distrust and antipathy toward those racialized as Black is normalized and in which “interracial mass behavior involving violence assumes a continuously potential danger.”25 Anti-Blackness thus conceals the inherent contradiction of Blackness—value minus worth—obscuring and distorting its structural location by, as Ralph and Singhal remark, contorting it into only a “debilitated condition.”26 Antiradicalism can be understood as the physical and discursive repression and condemnation of anticapitalist and/or left-leaning ideas, politics, practices, and modes of organizing that are construed as subversive, seditious, and otherwise threatening to capitalist society. These include, but are not limited to, internationalism, anti-imperialism, anticolonialism, peace activism, and antisexism. Anti-Blackness and antiradicalism function as the legitimating architecture of modern U.S. racial capitalism, which includes rationalizing discourses, cultural narratives, technologies of repression, legal structures, and social practices that inform and are informed by racial capitalism’s political economy.27 Throughout the twentieth century, anti-Blackness propelled the “Black Scare,” defined as the specter of racial, social, and economic domination of superior whites by inferior Black populations. Antiradicalism, in turn, was enunciated through the “Red Scare,” understood as the threat of communist takeover, infiltration, and disruption of the American way of life.28 For example, in the 1919 Justice Department Report, Radicalism and Sedition Among the Negroes, As Reflected in Their Publications, it was asserted that the radical antigovernment stance of a certain class of Negroes was manifested in their “ill-governed reaction toward race rioting,” “threat of retaliatory measures in connection with lynching,” open demand for social equality, identification with the Industrial Workers of the World (IWW), and “outspoken advocacy of the Bolshevik or Soviet doctrine.”29 Here, anti-Blackness, articulated through the fear of the “assertion of race consciousness,” was attached to the IWW and Bolshevism—in other words, to anticapitalism—to make it appear even more subversive and dangerous. Likewise, antiradicalism, expressed through the denigration of the IWW and Soviet Doctrine, was made to seem all the more threatening and antithetical to the social order in its linkage with Black insistence on equality and self-defense against racial terrorism. In this way, “defiance and insolently race-centered condemnation of the white race” and “the Negro seeing red” came to be understood as seditious in the context of modern U.S. racial capitalism. The link between my theory of modern U.S. racial capitalism and Robinson’s catholic theory of racial capitalism, beyond his “suggest[ion] that it was there,” is vivified through the prison abolitionist and scholar Ruth Wilson Gilmore, who writes: “Capitalism…[is] never not racial.… Racial capitalism: a mode of production developed in agriculture, improved by enclosure in the Old World, and captive land and labor in the Americas, perfected in slavery’s time-motion, field factory choreography, its imperative forged on the anvils of imperial war-making monarchs.”30 Racial capitalism, she continues, “requires all kinds of scheming, including hard work by elites and their compradors in the overlapping and interlocking space-economies of the planet’s surface. They build and dismantle and reconfigure states, moving capacity into and out of the public realm. And they think very hard about money on the move.”31 Perhaps more than Gilmore, though, my approach aligns with that of Neville Alexander as described by Hudson.32 Like Alexander, who focused on South Africa, I offer a particularistic understanding of racial capitalism, mine being rooted in the political economy of Blackness and the legitimating architectures of anti-Blackness and antiradicalism in the United States. Gilmore qua Robinson offers a more universalist and transhistorical conception. Like Alexander, my theory of modern U.S. racial capitalism is primarily rooted in (Black) Marxist-Leninists and fellow travelers. This is an important epistemological distinction: whereas Robinson finds Marxism-Leninism to be, at best, inattentive to race, my theory of modern U.S. racial capitalism is rooted in the work of Black freedom fighters who, as Marxist-Leninists, were able to offer potent and enduring analyses and critiques of the conjunctural entanglements of racialism, white supremacy, and anti-Blackness, on the one hand, and capitalist exploitation and class antagonism on the other hand.33 Although Robinson draws on scholars like Fernand Braudel, Henri Pirenne, David Brion Davis, and Eli Heckscher to understand European history, socialist theory, and the European working class, the work of Black Marxists like James Ford, Walter Rodney, Amílcar Cabral, and Paul Robeson offer me those same intellectual, historical, and theoretical resources. Finally, I agree with Alexander that the resolution to racial capitalism is antiracist socialism, not a cultural-metaphysical Black radical tradition. In what remains of this essay, I will draw on the work of Black Marxist-Leninists and anticapitalists to explicate the defining features of modern U.S. racial capitalism—war and militarism, imperialist accumulation, expropriation by domination, labor superexploitation, and property by dispossession. In this, I demonstrate that their critiques and analyses offer a blueprint for theorizing modern U.S. racial capitalism. War and militarism facilitate the endless drive for profit. Military conflicts between imperial powers result in the reapportioning of boundaries, possessions, and spheres of influence that often exacerbate racial and spatial economic subjection. War and militarism also perpetuate the endless construction of “threats,” primarily in racialized and socialist states, against which to defend progress, prosperity, freedom, and security. The manufacturing of conflict legitimates the mobilization of extraordinary violence to expropriate untold resources that produce relations of underdevelopment, dependency, extraversion, and disarticulation in the Global South. Moreover, the ruling elite and labor aristocracy in imperialist countries, not least the United States, wage perpetual war to defend their way of life and standard of living against the racialized majority who, because they would benefit most from the redistribution of the world’s wealth and resources, represent a perpetual threat.

#### Reject the aff and critically interrogate neoliberal discourse ⁠— resisting capitalist pedagogy in educational spaces is a prerequisite towards anti-capitalist political projects; COVID-19 provides a unique transition opportunity

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As educators, it is crucial for us to examine how we talk, teach, and write about inequality as an object of critique in an age of precarity, uncertainty and the current pandemic crisis. This is especially true at a time when a growing number of authoritarian regimes around the globe substitute replace thoughtful dialogue and critical engagement with the suppression of dissent and a culture of forgetting r. How do we situate our analysis of education as part of a broader discourse and mode of analysis that interrogates the promises, ideals, and claims of a substantive democracy? How do we fight against iniquitous relations of power and wealth that empty power of its emancipatory possibilities, and as Hannah Arendt has argued, “makes most people superfluous as human beings”? How might we understand how neoliberal ideology, with its appropriation of market-based values, regressive notions of freedom and agency, uses language to infiltrate daily life? How does a pandemic pedagogy in the service of neoliberalism produce identities defined by market values, and normalize a notion of responsibility and individuality that convinces people that whatever problem they face they have no one to blame but themselves? Repeated endlessly on right-wing media platforms, the underlying conditions that disproportionately produce chronic illness among poor people of color disappear among a public distracted, if not persuaded, by a pandemic pedagogy that celebrates unchecked self-interest, disdains social responsibility, and turns away from the reality of a society with deep-seated institutional rot and unravelling of social connections and the social contract. Pandemic pedagogy thrives on inequality and becomes a militarized and heartless normalizing tool to convince the broader public that the lives of the elderly, sick, and vulnerable should be valued according to how much they contribute to the economy. And if they are willing to die in order not to be a drain on the economy, all well and good. Nothing escapes the cruel logic of neoliberalism with its arrogance and hubris on full display as it bathes in the glow of right-wing populism, ultra-nationalism, and neofascism. Its accoutrements of dictatorship are everywhere and can be seen in the swagger of militia that storm state capitals, in police who punch and pepper spray protesters and push elderly men to the ground, and in military forces on the streets without badges reinforcing a climate of fear, repression, and unaccountability. There is more at work here than a lack of humanity on the part of the Trump administration. As the Irish journalist Fintan O’Toole observes, there is also the deepening grip of a culture of cruelty and dehumanization. He writes: “As a society the American people are being habituated into accepting cruelty on a wide scale. Americans are being taught by Trump and his administration not to see other people as human beings whose lives are as important as their own. Once that line has been crossed – and it is not just Trump and the people around him, but many of Trump’s supporters as well – then we know where that all leads, what the ultimate destination is. There is no mystery about it. We know what happens when a government and its leaders dehumanize large numbers of people.”

Depoliticization and the Authoritarian Turn

Neoliberalism is not only an economic system, it is also an ideological apparatus that relentlessly attempts to structure consciousness, values, desires, and modes of identification in ways that align individuals with its governing structures. Central to this pedagogical project is the attempt to prevent individuals from translating private issues and troubles into broader systemic considerations. By doing this, it becomes difficult for individuals to grasp the historical, social, economic, and political forces at work in shaping a social order as a human activity deeply immersed in specific relations of power. Neoliberalism’s attempt to erase or rewrite historical and social forces makes it difficult for individuals to imagine alternative notions of society, with themselves as collective actors, or view their problems as more than the limitations of faulty character, moral failure, or a problem of personal responsibility. Reducing individuals to isolated, discrete, hermetically-sealed human beings whose lives are shaped only by notions of self-reliance and self-sufficiency is a pedagogical strategy that utterly depoliticizes people, leading them to believe that however a society is shaped, it is part of a natural order. President Trump echoed this “no alternative” narrative when asked about celebrities and rich people having special access to being tested for the coronavirus while few others had access. He replied, “Perhaps that’s been the story of life.” This individualization of the social with its mounting privatization, gated communities, and social atomization undermines collective action, any viable notion of solidarity, and weakens the notion of global connectivity. The philosopher Byung-Chul Han has rightly argued that contemporary neoliberal society is shaped by a dysfunctional notion of solitude and hermitically-sealed notions of agency, all of which undermine the values and social connections vital to a democracy. He writes: “Those subject to the neoliberal economy do not constitute a we that is capable of collective action. The mounting egoization and atomization of society is making the space for collective action shrink… The general collapse of the collective and the communal has engulfed it. Solidarity is vanishing. Privatization now reaches into the depths of the soul itself. The erosion of the communal is making all collective efforts more and more unlikely.” This panoptical nature of hyper-individualism is more aligned with shared fears than shared responsibilities. Under such circumstances, trust and the notion that all life is related become difficult to grasp as the myopic language of private self-interest inures individuals to wider social problems such as extreme inequality. There is no understanding in this discourse of the damage fanatical entrepreneurialism does to our embodied collectivity. Nor is there any value attributed to the important responsibilities, social values, and notion of the common good that exceeds who we are as individuals, or how we have been shaped by diverse social forces in particular ways. It should be clear that questions of economic and social justice cannot be addressed by a neoliberal pedagogy that enshrines self-interest and privatization while converting every social problem into individualized market solutions or regressive matters of personal responsibility. Under neoliberalism’s disimagination machine, individual responsibility is coupled with an ethos of greed, avarice, and personal gain. One consequence is the tearing up of social solidarities, public values, and an almost pathological disdain for democracy. This radical form of privatization is also a powerful force for the rise of fascist politics because it depoliticizes individuals, immerses them in the logic of social Darwinism, and makes them susceptible to the dehumanization of those considered a threat or disposable. Just as the spread of the pandemic virus in the United States was not an innocent act of nature, neither is the rise and pervasive grip of inequality. What is clear is that neoliberal support for unbridled individualism has weakened democratic pressures and eroded democracy and equality as governing principles. Moreover, as a mode of public pedagogy, it has undercut social provisions, the social contract, and support for public goods such as education, public health, essential infrastructure, public transportation, and the most basic elements of the welfare state. As a form of pedagogical practice, neoliberalism has morphed into a form of pandemic pedagogy that sacrifices social needs and human life in the name of an economic rationality that values reviving economic growth over human rights. As a lived system of meaning and values, self-reliance and rugged individualism are the only categories available for shaping how individuals view themselves, and their relationship to others and to the planet. The individualization of everyone and the reduction of social problems to private troubles is paralleled by sanctioning a world marked by borders, walls, racism, hate, and a rejection of government intervention in the interest of the common good. Most importantly, neoliberal individualization personalizes power, creating a depoliticized subject whose only obligation as a citizen is defined by consuming and living in a world free from ethical and social responsibilities. In many ways, it does not just empty politics of any substance, it destroys its emancipatory prospects. The neoliberal strategists use education not only to mask their abuses and the effects of their criminogenic policies, they also – in a time of crisis, when dissatisfaction of the masses might lead to chaos, revolts, and dangerous levels of resistance – move dangerously close to creating the conditions for a fascist politics. The noted theologian Frei Betto is right in stating that under such conditions, “…they cover up the causes of social ills and cover up their effects with ideologies that, by obscuring causes, fuel mood in the face of the effects. That’s why neoliberalism is now showing its authoritarian face – building walls that divide countries and ethnic groups, executive power over legislature and judiciary, disinformation about digital networks, the cult of the homeland, the brazen offensive against human rights.” 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.

## Leadership

### 1NC---Turn [Heg Bad]

#### No primacy impact

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, <https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy>)

Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability. Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend. Overall, proponents of the stabilizing power of U.S. hegemony should keep in mind one of the most basic observations from cognitive psychology: rarely are our actions as important to others’ calculations as we perceive them to be.44 The so‐​called egocentric bias, which is essentially ubiquitous in human interaction, suggests that although it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. Washington is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is. The indispensability fallacy owes its existence to a couple of factors. First, although all people like to bask in the reflected glory of their country’s (or culture’s) unique, nonpareil stature, Americans have long been exceptional in their exceptionalism.45 The short history of the United States, which can easily be read as an almost uninterrupted and certainly unlikely story of success, has led to a (perhaps natural) belief that it is morally, culturally, and politically superior to other, lesser countries. It is no coincidence that the exceptional state would be called on by fate to maintain peace and justice in the world. Americans have always combined that feeling of divine providence with a sense of mission to spread their ideals around the world and battle evil wherever it lurks. It is that sense of destiny, of being the object of history’s call, that most obviously separates the United States from other countries. Only an American president would claim that by entering World War I, “America had the infinite privilege of fulfilling her destiny and saving the world.“46 Although many states are motivated by humanitarian causes, no other seems to consider promoting its values to be a national duty in quite the same way that Americans do. “I believe that God wants everybody to be free,” said George W. Bush in 2004. “That’s what I believe. And that’s one part of my foreign policy.“47 When Madeleine Albright called the United States the “indispensable nation,” she was reflecting a traditional, deeply held belief of the American people.48 Exceptional nations, like exceptional people, have an obligation to assist the merely average. Many of the factors that contribute to geopolitical fear — Manichaeism, religiosity, various vested interests, and neoconservatism — also help explain American exceptionalism and the indispensability fallacy. And unipolarity makes hegemonic delusions possible. With the great power of the United States comes a sense of great responsibility: to serve and protect humanity, to drive history in positive directions. More than any other single factor, the people of the United States tend to believe that they are indispensable because they are powerful, and power tends to blind states to their limitations. “Wealth shapes our international behavior and our image,” observed Derek Leebaert. “It brings with it the freedom to make wide‐​ranging choices well beyond common sense.“49 It is quite likely that the world does not need the United States to enforce peace. In fact, if virtually any of the overlapping and mutually reinforcing explanations for the current stability are correct, the trends in international security may well prove difficult to reverse. None of the contributing factors that are commonly suggested (economic development, complex interdependence, nuclear weapons, international institutions, democracy, shifting global norms on war) seem poised to disappear any time soon.50 The world will probably continue its peaceful ways for the near future, at the very least, no matter what the United States chooses to do or not do. As Robert Jervis concluded while pondering the likely effects of U.S. restraint on decisions made in foreign capitals, “It is very unlikely that pulling off the American security blanket would lead to thoughts of war.“51 The United States will remain fundamentally safe no matter what it does — in other words, despite widespread beliefs in its inherent indispensability to the contrary.

#### Leadership is unsustainable---retrenchment is gradual now, but recommitting makes it violent and forced.

Kupchan 20, professor of international affairs at Georgetown University and senior fellow at the Council on Foreign Relations. (Charles A., 10-21-2020, "America’s Pullback Must Continue No Matter Who Is President", *Foreign Policy*, https://foreignpolicy.com/2020/10/21/election-2020-smart-retrenchment/)

As the Trump era potentially comes to an end, many foreign-policy voices in the United States and abroad relish the prospect of the country’s roaring return to the global stage. But attempting a full-on comeback would be a mistake. If anything, the strategic pullback that President Donald Trump has initiated needs to continue—albeit in a more coherent and judicious manner.

Much of the debate surrounding the next administration’s foreign policy has focused on boldly reasserting U.S. leadership in the world. And it’s true: Global interdependence and upheaval do require steady U.S. leadership and engagement. What’s been largely missing from this debate, however, are the challenges facing the next president when it comes to right-sizing U.S. engagement abroad—especially military involvement—and bringing the nation’s strategic commitments back into line with it means and purposes.

The American electorate has turned sharply inward in response to military overreach in the Middle East, the economic dislocations brought about by innovation and globalization, and the national calamity caused by COVID-19. The nation’s next president would be wise to take note—and craft a brand of global statecraft that is effective but also politically sustainable. Otherwise, the strategic pullback that needs to take place will occur by default rather than by design, risking that U.S. overreach could turn into even more dangerous underreach. Indeed, that’s what’s been happening during Trump’s presidency. He seems to have understood the need to retrench. But his troop withdrawals from Afghanistan, Iraq, Syria, and Germany have been haphazard, making a hash of the effort. Retrenchment cannot be done by tweet, in unpredictable fits and starts, and couched in an abrasive “America first” unilateralism that has alienated allies and set the world on edge.

Democratic candidate Joe Biden is far better suited to restore an equilibrium between the nation’s foreign policy and its political will. Throughout his career, he has been a pragmatic and prudent internationalist; looking forward, pragmatism and prudence will require a more selective and discriminating internationalism, not restoration of the status quo ante. Three-quarters of the American public want U.S. troops to leave Afghanistan and Iraq—it is time to downsize the U.S. footprint in the Middle East. U.S. foreign policy has become over-militarized—the next administration should reallocate priorities and resources, putting more emphasis on diplomacy, cybersecurity, global public health, and climate change. Washington should also return to being a team player if it is to lighten its load; retrenchment and multilateral engagement go hand in hand. Meeting the threat posed by China, managing international trade and finance, preventing nuclear proliferation, addressing pandemics—these and other urgent challenges all require broad international cooperation. And as the United States pulls back from its role as global policeman, it will want like-minded partners to help fill the gap. These partnerships become stronger through diplomacy and teamwork.

The top priorities of the next president will be at home: taming the pandemic, repairing the economy, and reviving democratic institutions and norms. Only if the country’s democratic lights come back on can it effectively deal with the rest of the world. In the meantime, the next administration needs to continue Trump’s effort to downsize the nation’s foreign entanglements—but in a smart and measured way. The United States needs to step back without stepping away. “Build back better” applies abroad just as much as it does at home.

#### Pursing heg locks in overstretch and a Russia-China axis.

Porter 19, Professor of International Security and Strategy at the University of Birmingham. He is also Senior Associate Fellow at the Royal United Services Institute, London and a Fellow of the Quincy Institute for Responsible Statecraft. (Patrick Porter (2019) “Advice for a Dark Age: Managing Great Power Competition”, The Washington Quarterly, 42:1, 7-25, <https://doi.org/10.1080/0163660X.2019.1590079>)

There is little sign of active “splitting” currently, however. (A notable exception is recent collaboration with Beijing over North Korea’s nuclear program, even if it is marred by tension and distrust.) Rather, the United States is encouraging the perception of a common enemy. By militarily positioning itself within striking distance of Russia and China through a semi-encircling presence in eastern Europe and north-east Asia, expanding alliances, entertaining further expansion, ramping up freedom-of-navigation operations (FONOP) in the South China Sea, reviving the pursuit of an antiballistic missile shield, establishing a reputation as a sponsor of “color revolutions” and as an overthrower of regimes, Washington helps draw Beijing and Moscow closer together into a balancing coalition. A nascent Russia-China alliance is suggested by Russia’s own interagency inquiry into the possibility, the frequency of Putin-Xi contact, deliberate tightening of economic interaction, and overt displays and declarations of close military ties through joint exercises and arms sales.24

It does not have to be this way. The United States has a geopolitical advantage—its distant location. Most powers, most of the time, are more concerned by the potential threat of other nearby land powers than distant sea powers.25Based in the Western hemisphere, the United States has less of a compelling security interest in adversaries ’backyards, allowing Washington the choice of adopting a more distant pose. Russia and China, by contrast, are neighbors so cannot withdraw, both are primarily continental land-based military powers, and historically such proximity can exacerbate rivalries and mutual fears. Sino-Russian antagonism remains a built-in possibility. Only under the right conditions, though, can the rivalries again grow. This is not a plea for a trilateral realignment whereby one state agrees to be the United States’ “geopolitical hammer” and teams up with Washington to contain the other. Rather, it is to suggest that more American restraint in one theater could make space for Russia-China frictions to take effect in another.

This geopolitical principle will prove controversial. The bipartisan consensus among security experts in Washington is to assume that only a state of preponderance over all rivals will suffice. Policymakers assume that the problem lies in Washington’s failure to apply enough power, or to apply enough power efficiently enough. They then call for the allocation of more resources and their smarter use in order to sustain U.S. dominance. The congressionally-mandated2018National Defense Strategy Commission report, appointed to make recommendations, is a case in point. It takes dominance as the obvious U.S. national interest. It complains that as rivals challenge American power, U.S. military superiority and its capacity to wage concurrent wars has eroded, due tor-educed defense expenditure, and advises that it spend more while cutting entitlements.26On this logic, a defense budget that is already10 times the size of Russia’s and four times the size of China’s is not enough, for U.S. grand strategy must go beyond defense and deterrence to achieve unchallengeable strength. That the pursuit of dominance could be the source of the problem, not the answer, is not considered.

Even the United States cannot prudently take on every adversary on multiple fronts. The costs of military campaigns against these adversaries in their backyards, whether in the Baltic States or Taiwan, would outstrip the losses that the U.S. military has sustained in decades. Short of all-out conflict, to mobilize for dominance and risk escalation on multiple such fronts would court several dangers. It would overstretch the country. The U.S. defense budget now approaches $800 billion annually, not including deficit-financed military operations. This is a time of ballooning deficits, where the Congressional Budget Office warns that “the prospect of large and growing debt poses substantial risks for the nation.”27 If in such conditions, current expenditure is not enough to buy unchallengeable military preponderance—and it may not be—then the failure lies not in the failure to spend even more.

Neither is the answer to sacrifice the quality of civic life at home to service the cause of preponderance abroad. The old “two war standard,” a planning construct whereby the United States configures its forces to conduct two regional conflicts at once, would be unsustainably demanding against more than one peer competitor, or potentially with a roster of major and minor adversaries all at once.28After all, the purpose of American military power is ultimately to secure a way of life as a constitutional republic. To impose ever-greater debts on civil society and strip back collective provision at home, on the basis that the quality of life is expend-able for the cause of hegemony, is perversely to set up power-projection abroad as the end, when it should be the means. The problem lies, rather, in the inflexible pursuit of hegemony itself, and the failure to balance commitments with scarce resources.

To attempt to suppress every adversary simultaneously would drive adversaries together, creating hostile coalitions. It also may not succeed. Counterproliferation in North Korea is difficult enough, for instance, but the task becomes more difficult still if U.S. enmity with China drives Beijing to refuse cooperation over enforcing sanctions on Pyongyang. Concurrent competitions would also split American resources, attention and time. Exacerbating the strain on scarce resources between defense, consumption and investment raises the polarizing question of whether preponderance is even worth it, which then undermines the domestic consensus needed to support it. At the same time, reduced investment in infrastructure and education would damage the economic foundations for conducting competition abroad in the first place.

Taken together, indiscriminate competition risks creating the thing most feared in traditional U.S. grand strategy: a hostile Eurasian alliance leading to continuous U.S. mobilization against hostile coalitions, turning the U.S. republic into an illiberal garrison state. If the prospect for the United States as a great power faces a problem, it is not the size of the defense budget, or the material weight of resources at the U.S. disposal, or popular reluctance to exercise leadership. Rather, the problem lies in the scope of the policy that those capabilities are designed to serve. To make the problem smaller, Washington should take steps to make the pool of adversaries smaller.

#### Russia-China coordination triggers global war.

Kendall-Taylor & Shullman 19, \*PhD in Political Science from Yale, Senior Fellow in and Director of the Transatlantic Security Program at the Center for a New American Security an Adjunct Professor in Georgetown University’s School of Foreign Service. \*\*PhD, Senior Adviser at the International Republican Institute and an Adjunct Senior Fellow in the Transatlantic Security Program at the Center for a New American Security. (Andrea, David, 5/14/19, "A Russian-Chinese Partnership Is a Threat to U.S. Interests", *Foreign Affairs*, https://www.foreignaffairs.com/articles/china/2019-05-14/russian-chinese-partnership-threat-us-interests)

While Washington takes a wait-and-see approach, Moscow and Beijing could be coordinating to significantly thwart U.S. interests over the next 15 to 25 years. The two powers may never forge a formal military alliance, but they could still work together in ways that cause major headaches for the United States. Imagine, for example, that Russia and China coordinate the timing of hostile actions on their peripheries. If China made aggressive moves in support of its sovereignty claim in the South China Sea at the same time that Russia made further incursions into Ukraine, U.S. forces would struggle to respond effectively to either gambit.

Nonmilitary collaboration between Russia and China could weaken the United States and even threaten its way of life. Both countries are likely to use their cyber and disinformation capabilities to, as the director of national intelligence put it in January, “steal information, to influence our citizens, or to disrupt critical infrastructure.” China currently does not exhibit Russia’s zeal for using such measures, particularly against the United States; but if U.S.-Chinese relations darken, Beijing could plausibly take a page from Russia’s playbook and mount coordinated, deniable cyberattacks or interference campaigns against the United States.

China and Russia behave very differently in pursuit of their foreign policy objectives, but the combined effect of their actions is often greater than the sum of its parts. In Europe, for example, China has amassed economic influence through growing trade relationships and Belt and Road-related infrastructure investments not contingent on standards for democratic governance and human rights, particularly in eastern Europe, Greece, and Italy. This engagement will ultimately translate into political leverage, as it already has in many countries in Asia. Russia, for its part, appears intent on pursuing hybrid tactics that disrupt democratic processes. On their own, each of these activities is already worrisome for the United States and Europe. But a scenario in which each country’s actions amplify the other’s is not hard to imagine. China, for example, could eventually use its growing ownership of European ports and rail lines to slow a NATO response to Russian aggression. Likewise, Beijing could use the economic leverage it has accrued to quietly dissuade an already reluctant NATO member state such as Hungary or Turkey from responding to Russia’s hybrid tactics, which could ultimately serve to discredit NATO’s commitment to collective defense.

## Expropriation

### 1NC---AT: Debris

**Monitoring systems solve debris collision.**

**Paradise 10** — Lee A. Paradise, writer for Science Clarified encyclopedia, 2015 ("Does the accumulation of "space debris" in Earth's orbit pose a significant threat to humans, in space and on the ground?," *Science Clarified,* July 23rd, Accessible Online at [www.scienceclarified.com/dispute/Vol-1/Does-the-accumulation-of-space-debris-in-Earth-s-orbit-pose-a-significant-threat-to-humans-in-space-and-on-the-ground.html](http://www.scienceclarified.com/dispute/Vol-1/Does-the-accumulation-of-space-debris-in-Earth-s-orbit-pose-a-significant-threat-to-humans-in-space-and-on-the-ground.html), Accessed On 11-13-2015)

In fact, monitoring systems such as the Space Surveillance Network (SSN) maintain **constant track of space debris** and Near Earth Orbits. Thanks to ground-based radar and computer extrapolation, this provides an early warning system to determine if even the possibility of a collision with space debris is imminent. With this information, the Space Shuttle can **easily** maneuver out of the way. The Space Science Branch at the Johnson Space Center predicts **the chance of such a collision occurring to be about 1 in 100,000**, which is certainly not a significant enough risk to cause panic. Soon the ISS will also have the capability to maneuver in this way as well.

#### Asteroid mining fails, turns the environment, and causes resource wars.

Oduntan 15 ⁠— Gbenga Oduntan, 11-25-2015, "Who owns space? US asteroid-mining act is dangerous and potentially illegal," No Publication, https://phys.org/news/2015-11-space-asteroid-mining-dangerous-potentially-illegal.html

An event of cosmic proportions occurred on November 18 when the US congress passed the Space Act of 2015 into law. The legislation will give US space firms the rights to own and sell natural resources they mine from bodies in space, including asteroids. Although the act, passed with bipartisan support, still requires President Obama's signature, it is already the most significant salvo that has been fired in the ideological battle over ownership of the cosmos. It goes against a number of treaties and international customary law which already apply to the entire universe. The new law is nothing but a classic rendition of the "he who dares wins" philosophy of the Wild West. The act will also allow the private sector to make space innovations without regulatory oversight during an eight-year period and protect spaceflight participants from financial ruin. Surely, this will see private firms begin to incorporate the mining of asteroids into their investment plans. Supporters argue that the US Space Act is a bold statement that finally sets private spaceflight free from the heavy regulation of the US government. The misdiagnosis begins here. Space exploration is a universal activity and therefore requires international regulation. The act represents a full-frontal attack on settled principles of space law which are based on two basic principles: the right of states to scientific exploration of outer space and its celestial bodies and the prevention of unilateral and unbriddled commercial exploitation of outer-space resources. These principles are found in agreements including the Outer Space Treaty of 1967 and the Moon Agreement of 1979. The US House Committee on Science, Space and Technology denies there is anything in the act which violates the US's international obligations. According to this body, the right to extract and use resources from celestial bodies "is affirmed by State practice and by the US State Department in Congressional testimony and written correspondence". Crucially, there is no specific reference to international law in this statement. Simply relying on US legislation and policy statements to justify the plans is obviously insufficient. So what's at stake? We can assume that the list of states that have access to outer space – currently a dozen or so – will grow. These states may also shortly respond with mining programmes of their own. That means that the pristine conditions of the cradle of nature from which our own Earth was born may become irrevocably altered forever – making it harder to trace how we came into being. Similarly, if we started contaminating celestial bodies with microbes from Earth, it could ruin our chances of ever finding alien life there. Mining minerals in space could also damage the environment around the Earth and eventually lead to conflict over resources. Indeed what right has the second highest polluter of the Earth's environment got to proceed with some of the same corporations in a bid to plunder outer space? While we're not there yet, developments towards actual space mining may begin to occur within a decade.

# 2NC

## Topicality

### O/V ⁠— 2NC

#### A ⁠— single industries, which are each a separate topic ⁠— here’s a short list

Select USA No Date, (Select USA, No Date, “INDUSTRIES”, <https://www.selectusa.gov/industries>)

The United States is home to the most innovative and productive companies in the world, forming a diverse and competitive group of industry sectors. The U.S. industries highlighted here are exceptionally dynamic and represent key opportunities for global growth and success.

Aerospace

Agribusiness

Automotive

Biopharmaceuticals

Chemicals

Consumer Goods

Energy

Environmental Technology

Financial Services

Logistics and Transportation

Machinery and Equipment

Media and Entertainment

Medical Technology

Professional Services

Retail Trade

Software and IT Services

Textiles

Travel, Tourism, and Hospitality

#### B ⁠— 32 million companies

FedCommunities 21, (FedCommunities, 9-9-2021, “Small-business owners: Share your experiences with credit access this past year,” FedCommunities <https://fedcommunities.org/data/2021-take-federal-reserve-small-businesses-credit-survey/>)

There are 32.5 million small businesses in the United States. That’s 32.5 million stories of small-business ownership. Representative data drawn from these stories can shed light on more universal experiences.

#### C ⁠— aff could further disaggregate:

#### Antitrust prohibitions can be global

Hamer et al. 16, partner in Baker & McKenzie's Washington, DC office and Chair of the Firm’s North American Antitrust and Competition Practice Group. Celina Joachim is a partner in Baker McKenzie's Houston office and certified in labor and employment law by the Texas Board of Legal Specialization. She represents management in all aspects of labor and employment law, including employment arbitration, litigation, counseling, and traditional labor law. Cynthia Jackson is a partner in the Compliance Group in Baker & McKenzie's Palo Alto office (Mark H. Hamer, 11-15-2016, “US Federal Agencies Issue Joint Guidance for HR Professionals Warning of Criminal Liability for Wage-Fixing and No-Poaching Agreements,” Global Compliance News, <https://www.globalcompliancenews.com/2016/11/15/us-issues-guidance-for-hr-professionals-wage-fixing-20161110/>)

US antitrust prohibitions can apply to global conduct when there is a negative effect on competition in the United States. For instance, agreements between non-US companies, or transactions driven outside of the US, that include US compensation data, wage or benefit sharing, and/or no-hire / no poach or wage fixing agreements which impact US workforces will be in violation of this new guidance and constitute unlawful antitrust agreements. Multinational employers should therefore be mindful of sharing data or entering into such restrictive agreements where they involve US workforces.

#### AND specific products

Markham 11, Marshall P. Madison Professor of Law, The University of San Francisco School of Law (Jesse W. Markham Jr., 2011, “LESSONS FOR COMPETITION LAW FROM THE ECONOMIC CRISIS: THE PROSPECT FOR ANTITRUST RESPONSES TO THE “TOO-BIG-TO-FAIL,” PHENOMENON” , FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW, Vol. 16, Issue 2, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1281&context=jcfl>)

A merger is not the only setting in which antitrust champions scale efficiencies. At the retail level, economies of scale constitute a legitimate reason for a manufacturer to limit intrabrand competition by imposing vertical restraints.92 Antitrust law also generally tolerates combinations of competitors into joint ventures to achieve economies of scale, with the presence of such efficiencies removing a challenge from the application of per se condemnation and establishing a facially plausible justification for the concerted activity.93 Removing conduct from per se illegality comes close to legalizing it, given the rarity of plaintiff successes in challenging the conduct under the rule of reason.94 [begin footnote 94] 94. One rare successful challenge under the rule of reason is found in Polygram Holding, Inc. v. FTC, 416 F.3d 29 (D.C. Cir. 2005), a case that is indicative of the difficulties plaintiffs face under Post-Chicago School antitrust rules. In that case the FTC challenged an agreement between competing record companies to suspend advertising and discounting of two record albums temporarily during the launch period for a jointly-produced recording. The court affirmed the FTC’s application of the rule of reason to the challenged agreement, even though it involved competitors agreeing not to put specific products on sale for a period of time – a collusive restriction on price and advertising that in an earlier era probably would have met with per se condemnation. [end footnote 94]

## Regulation

### O/V ⁠— 2NC

### AT: Perm do Both ⁠— 2NC

#### Perms have to include antitrust enforcement, otherwise they sever; this one doesn’t, because the two strategies are mutually exclusive

Shelanski 18, Professor of Law at Georgetown (Howard Shelanski, 2018, “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 structure 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 regulatory 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.

#### Causes antitrust suits to get dismissed ⁠— that still takes resources, but nullifies solvency

Shelanski 11, Professor of Law at Georgetown (Howard Shelanksi, 2011, “The Case for Rebalancing Antitrust and Regulation,” 109 MICH. L. REV. 683, Lexis)

One good way to measure the importance of a court decision is to ask how previous cases would have differed had the decision been in place earlier. By that measure, the Supreme Court's decisions in Verizon v. Trinko' and Credit Suisse v. Billing2 turn out to be unusually significant. By broadening the conditions under which regulation blocks antitrust enforcement, those cases redrew the boundary between antitrust and regulation and would likely have prevented the government from bringing, in previous decades, a number of important antitrust cases in regulated industries. Most notably, Trinko and Credit Suisse would likely have blocked the suit by the U.S. Department of Justice ("DOJ") that in 1984 broke up AT&T's monopoly over telephone service, considered among the most important antitrust enforcement actions in history. 4 The preclusion of such cases has strong implications for the future of both antitrust enforcement and industrial regulation. Before 2004, the year the Supreme Court decided Trinko, public agencies and private plaintiffs had long enforced antitrust law in a variety of regulated settings. Several of those cases reached the Supreme Court and many more went through lower federal courts with no finding that they were inconsistent with the core objectives of antitrust or would interfere with regulatory objectives.- Yet many of those cases would have difficulty surviving a motion to dismiss today. Without specifically indentifying legal flaws or harmful consequences from previous antitrust actions in regulated markets, the Supreme Court has in the past decade reconfigured the relationship between antitrust law and regulation to make it much more difficult for antitrust law to play an important role in regulated markets-a limitation this Article will argue is potentially costly and unnecessarily strong.

### ---xt: Mutually Exclusive

#### The two are mutually exclusive

Shelanski 11, Professor of Law @ Georgetown (Howard, “The Case for Rebalancing Antitrust and Regulation,” 109 MICH. L. REV. 683, Lexis)

Contrary to the Court's presumption,17 in many cases regulation will be more costly than either antitrust enforcement or a combination of antitrust and regulation would be. In the words of Justice (then Judge) Breyer, "[A]ntitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative."' Of course, if Congress requires an agency to regulate, policymakers cannot choose antitrust as an alternative. But antitrust might still be a beneficial supplement even if it is not a full substitute; and in the far more usual case where agencies have some discretion in the promulgation and enforcement of regulations, the comparative benefits of antitrust as a substitute become important. Even if regulators have authority to regulate, they may decide that forbearance from "gearing up the cumbersome, highly imperfect bureaucratic apparatus of classical regulation" in favor of antitrust enforcement will be the better policy choice.'"9 This will be a particularly important option as economic conditions in the regulated industry change. The case-by-case approach of antitrust enforcement, which targets specific instances of anticompetitive conduct as they arise, can usually deal with unique or unexpected factual situations better than can regulatory rulemaking, which depends more on specifying competitive obligations and prohibitions prospectively, in advance of actual conduct. After Trinko and Credit Suisse, however, statutory authority to regulate has become a greater potential barrier to antitrust law as a substitute for regulation.

### AT Perm Do CP

#### The permutation severs. Antitrust and regulation are wholly distinct approaches---that's Shelanski. Prefer it, it’s from a Professor of Law. Severance is a voting issue for clash evasion.

#### The aff requires law enforcement, the CP doesn’t. And, the aff requires a judicial remedy, the counterplan 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.

#### If the permutation DOESN’T sever, then the aff isn’t topical, because it doesn’t “expand the scope” of core antitrust laws. Vote neg on T if they extend the perm.

Singer 20 (Hal Singer is a managing director of Econ One and an adjunct professor at Georgetown’s McDonough School of Business. He is also the co-author of the e-book The Need for Speed: A New Framework for Telecommunications Policy for the 21st Century (Brookings Press 2013), and co-author of the book Broadband in Europe: How Brussels Can Wire the Information Society (Kluwer/Springer Press 2005). He is a recipient of the 2018 Antitrust Enforcement Award from the American Antitrust Institute for his work In Re Lidoderm Antitrust Litigation. “Top 10 Admissions from Tech CEOs Secured at the Antitrust Hearing” *ProMarket*, <https://promarket.org/2020/07/31/top-10-admissions-from-tech-ceos-secured-at-the-antitrust-hearing/> , July 31, 2020, date accessed 9/5/21)

This week’s Congressional hearing produced evidence of anticompetitive conduct that state attorneys general and private enforcers can use to pursue the dominant platforms under existing antitrust laws. It also uncovered behavior that does not fit within antitrust’s ambit but can be used to support new laws that would either expand the scope of antitrust or attack the conduct outside of antitrust.

### S---AT Regulatory Evasion

#### Regulations work through deterrence

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.

#### 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.

#### If they’re right that companies would risk it all to violate the regulation, they would do it in antitrust too

Spindler 64 (George Spindler. “ANTITRUST-RESTRAINT OF TRADE-CONSIGNMENT CONTRACT BETWEEN OIL COMPANY AND FILLING STATION OPERATOR: IS IT ILLEGAL AS AGREEMENT FOR RESALE PRICE MAINTENANCE?” , *DePaul Law Review* , Volume 14, Issue 1, 1964, <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=3299&context=law-review> , date accessed 9/7/21)

Resale price maintenance would seem to demand a sale by the supplier and a resale by the purchaser. Thus consignments, whereby an agent sells goods of his principal at prices fixed by him, with title passing directly from producer to consumer have been held not to constitute resale price maintenance, in the case of United States v. General Electric.15 [[BEGIN FOOTNOTE 15]] 15 272 U.S. 476 (1926). The General Electric Company had established a nationwide system to distribute electric light bulbs through "agents." The agents could sell only at prices set by General Electric. Indeed, the evidence indicated that the purpose of the consignment program was to circumvent the antitrust prohibition against manufacturer's control of resale prices. [[END FOOTNOTE 15]] In this case, after carefully examining General Electric's consignment agreements,16 the Court found nothing inconsistent with the agency relationship claimed by the company. The Court concluded,

... there is nothing as a matter of principle or in the authorities which requires us to hold that genuine contracts of agency like those before us, however comprehensive as a mass or whole in their effect, are violation of the Anti-trust Act. The owner of an article patented or otherwise is not violating the common law or the Anti-trust Law by seeking to dispose of his articles directly to the consumer and fixing the price by which his agents transfer the title from him directly to such customer. 17

### Solvency ⁠— 2NC

#### \*\*\*Regulation more effectively addresses market failures

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.

#### Counterplan is more durable and enforceable

Shelanski 18, Professor of Law at Georgetown (Howard Shelanski, 2018, “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

#### Regulation is the more direct route to solvency

Shughart 8, PhD in Economics, Professor in Public Choice at Utah State University (William Shughart, 2008, “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.

### NB---Overstretch

#### The counterplan avoids overstretch of antitrust agencies

Sokol 20, University of Florida Research Foundation Professor of Law, University of Florida (Daniel, “Antitrust's "Curse of Bigness" Problem ,” <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=2020&context=facultypub>)

Antitrust works well because it is technocratic in that a singular (but flexible within its economics) goal is administrable institutionally. To introduce the world of political imperfections into a technical process that examines markets would create further distortions affecting consumers.152 Antitrust does well dealing with antitrust problems. To the extent that there are other related problems, the right answer is not to create an antitrust that lacks democratic accountability (because antitrust becomes regulation via the backdoor) and exceeds its mandate of the past forty years. Rather, the better solution is to identify the underlying problem and solve it with more effective tools. If the problem is one of redistribution, tax is a better choice than antitrust.153 If the problem is one of privacy, strengthen privacy laws. 154 If the problem is one of financial institutions or sector regulators not doing what they need to do, correct structural problems with sector regulators. Antitrust has increasingly moved out of sector regulation 155 and toward advocacy. 156 The advocacy budget of the antitrust agencies is tiny, and to the extent that the problem is the rules of the game for particular industry sectors, Wu falls short by not suggesting greater competition advocacy. Wu’s concern with big tech companies because they are big (p. 126) is as misplaced now as it was earlier in antitrust history. Antitrust has gone through various moments in which it had reevaluated whether it has the proper tools to combat anticompetitive behavior in technology-related markets.157 It does have such tools and can bring important cases in these markets.158 It was just a decade ago that we were told that Walmart was taking over shopping, that eBay was the largest online marketplace, or that Facebook was the primary way in which users shared information. Today, Uber competes with Lyft, Amazon has eclipsed eBay, Facebook is a legacy service, and younger people use any other set of applications to share information— such as Pinterest, Twitter, or Snapchat. In a world of continuous change, antitrust is what remains constant. It has the tools to police against unlawful exercise of monopoly power and adapts to changes in economic theory and empirics. To ask antitrust to go beyond its institutional capacity sets up antitrust to fail, because Wu’s deeper concern is with how society is structured. That structure can be changed through elections to the presidency and Congress and through changes as to the makeup of the Supreme Court. Antitrust history shows that it is the Supreme Court that changes antitrust law and policy the most because of antitrust’s common law–like nature. 159

### NB---Overstretch---Tech-Specific

#### \*\*\*\*Counterplan avoids FTC tradeoff

Wheeler 20, was the 31st Chairman of the Federal Communications Commission (FCC) from 2013 to 2017. He is presently a Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution (Tom, et al, “New Digital Realities; New Oversight Solutions in the U.S.,” https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities\_August-2020.pdf)

In the ongoing exercise of their existing responsibilities, current federal agencies are already stretched thin. To expect an agency such as the FTC—already enforcing antitrust, deceptive practices and other statutes—to add oversight of digital platform activities to its portfolio would defocus the agency from its essential tasks. The importance of the FTC’s antitrust activities cannot be underestimated, especially in the post-COVID era where competition will be fighting not to become a COVID casualty.20 The responsibilities of FTC, for instance, over both antitrust enforcement (including digital company mergers) along with oversight of traditional industrial activities as diverse as product labeling, advertising representations, funeral home practices, and robocalls should not be further diluted. Rather than bolt on to and dilute an existing agency’s responsibilities, it is preferable to start with a clean regulatory slate and specifically established congressional expectations.

## Advantage CP

#### Establishing a code of conduct that prohibits reckless behavior and debris creation solves space arms races and sat failure – norms are essential to clarifying deterrence

Krepon 12 [Michael Krepon is the co-founder of the Stimson Center. He worked previously at the Carnegie Endowment, the State Department, and on Capitol Hill. He has written over 500 articles and is the author or editor of twenty-two books, mostly the product of Stimson programming. "Space Diplomacy and an International Code of Conduct." https://www.e-ir.info/2012/06/21/space-diplomacy-and-an-international-code-of-conduct/]

A treaty banning weapons that can be used in space is neither feasible nor verifiable, since many essential, multi-purpose military capabilities can be used to interfere with, disable, or destroy objects in space. Some of these capabilities, such as land- and sea-based ballistic missiles, have existed for over half a century. Their number has declined greatly, but they are not going to be eliminated any time in the foreseeable future.

Other capabilities that could be applied to space warfare, including theater missile defense interceptors, are coming on line. States that feel particularly threatened by another state’s ballistic missiles will not be willing to entirely forego missile defenses – their own, or those of a protector such as the United States. Only a few of these interceptor missiles employed against satellites can mess up low earth orbit for all space-faring nations, as China demonstrated in 2007. Consequently, there are strong incentives to use missile defenses for their intended purpose, and not for blowing satellites to smithereens.

Banning all military capabilities that can be directed against satellites isn’t feasible. Banning “dedicated” ASAT capabilities – those specifically designed for use against satellites – isn’t consequential, because much of the latest anti-satellite capabilities would remain untouched.

There is an alternative between doing nothing and trying to negotiate a treaty that can’t be effective or verifiable, and will not be acceptable to the U.S. Senate. This alternative is an International Code of Conduct for responsible space-faring nations. The practice of utilizing codes of conduct to set norms or rules of the road is not new. In 1972, the Nixon administration negotiated an “Incidents at Sea Agreement” with the Kremlin to help prevent dangerous games of chicken involving warships and submarines. In 1989, President George H.W. Bush negotiated a “Dangerous Military Practices Agreement” with Mikhail Gorbachev, establishing norms for ground and air forces operating in close proximity. The George W. Bush administration agreed to two codes of conduct to help combat proliferation.

All of these useful diplomatic initiatives took the form of executive agreements in the United States, not treaties, because they didn’t control or reduce military forces. Space could also benefit from a code of conduct that clarifies wrongdoing, facilitates corrective responses, and reduces the likelihood of devastating accidents, miscalculations and collisions.

The International Code of Conduct also has its detractors. Some critics in the United States oppose it because it seems too much like a treaty that could impede U.S. war fighting in space. This critique of the Code of Conduct dwells on potential rule breakers, especially China. If, as critics assert, a Code of Conduct would not be helpful for norm setting, how would its rejection improve the conduct that they find most objectionable in others? An analogous argument could be made against highway traffic regulations. There are speeding limits and other rules to promote highway safety, but not everyone abides by them. Would we be safer by dispensing with traffic regulations?

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To be sure, rule breaking in space can be far more consequential than anarchy on the highways. As a practical matter, if China and Russia play by their own rules, the United States will, as well. An International Code of Conduct will fall short unless it includes the three most important space-faring nations.

Another argument against the Code is that it does not impose penalties or sanctions for misbehavior. Critics fail to clarify how their desire to impose penalties or sanctions can be advanced by opposing a Code of Conduct. Without rules in space, there are no rule breakers.

Some critics worry that a Code could lull the United States into a false sense of security when China is increasing its military capabilities in space, on land and at sea – especially China’s growing sea-denial capabilities against the U.S. Pacific Fleet. These concerns were also expressed in the 1970s, when the Soviet Union placed satellites in orbit that could sometimes track U.S. surface combatants.

Back then, Washington and Moscow tested anti-satellite weapons infrequently before shelving them. During the Cold War, the notion of protecting surface navies by preemptively engaging in anti-satellite warfare was widely dismissed as being extremely dangerous, especially because satellites were intertwined with the nuclear deterrents of both superpowers.

With one Cold War receding in the rear-view mirror, it makes little sense to invite a new one, if it can be avoided. The United States and China have the ability to interfere with or destroy satellites. As was the case with the Soviet Union, and is the case now with respect to China, mutual capabilities to engage in space warfare constitute a basis for restraint and deterrence. Existing space warfare capabilities make a Code of Conduct all the more essential to affirm responsible behavior and to facilitate appropriate responses if others act irresponsibly.

#### Clarifying escalation thresholds in advance is key to preventing miscalc in a crisis – lack of cold war experience in space makes preemptive norms essential

Finch 14 [James P. Finch is the Principal Director for Countering Weapons of Mass Destruction, Office of the Under Secretary of Defense for Policy, where he previously acted as the Principal Director for Space Policy. He has held space-related leadership positions in the Office of the Secretary of Defense and Headquarters U.S. Air Force. "Bringing Space Crisis Stability Down to Earth." https://ndupress.ndu.edu/Media/News/Article/577582/bringing-space-crisis-stability-down-to-earth/]

Simply put, the weapon, target, and context all contribute to the perceived intent and effects of a counterspace attack. Unlike in other domains, tremendous ambiguity exists regarding the use of counterspace weapons. This means that all of these variables would be open to interpretation in crises, and it should be remembered that an inherent characteristic of crises is a short timeframe for decisionmaking. When time is short and the potential cost of inaction is significant, or even catastrophic, decisionmakers tend to lean toward worst-case interpretations of an adversary’s actions. This is a clear recipe for inadvertent miscalculation.

Bringing Space Down to Earth

The Cold War adversaries had many years to develop mutual understandings about the nature and role of nuclear weapons, and these understandings contributed to strategic stability. These understandings were born out of realworld crises, such as the Berlin crises, Korean War, and Cuban missile crisis. They also emerged from dialogues, such as formal summits and long-running arms control negotiations. The former are certainly much more dangerous than the latter, and no one wants to see the space equivalent of a Cuban missile crisis.

There are signs of progress. The United Nations Group of Government Experts recently recommended bilateral and multilateral transparency and confidence-building measures. In addition, the European Union is leading open-ended consultations to develop an “International Code of Conduct for Outer Space Activities.” While these measures will help promote the responsible use of space, they do not squarely address the current lack of mutual understanding regarding how space attacks will be perceived in the midst of a crisis. This is of particular concern for the United States and China, which, as previously noted, increasingly rely on space systems to execute their political and military strategies.

At the government-to-government (so-called Track 1) level, there is not currently a productive venue for the United States and China to develop a mutual understanding of how space plays into crisis stability. While space security has been incorporated into existing diplomatic and defense dialogues, these steps in the right direction have been slow and tentative, and there is much work to be done.

Recently, some engagements led by think tanks (known as Track 1.5 dialogues due to mixed delegations of government and academics) have begun to explore the issue, and it is clear that both sides harbor a lot of mistrust and misperception. The United States continues to raise questions about China’s military modernization and its potential coercion of regional neighbors over contested territory. China continues to question the implications of expanding U.S. missile defenses and, to a lesser extent, the U.S. rebalance to the Asia-Pacific region.

Suspicions about space activities fit within this broader geopolitical mistrust. The United States continues to express concern about Chinese space activities and China’s lack of transparency when it comes to unique space launch profiles or robotics experiments. China, for its part, expresses concerns about U.S. activities, such as the reusable experimental test platform known as the X-37B. These misperceptions are hard to resolve, both because of the inherent dual-use nature of space systems and the difficulty in creating transparency for a regime so far removed from terra firma. Resolving such suspicions and building trust take time and require a common understanding of the nature of the space domain and space systems.

Returning to the formulation of Colby, recall that “in a stable situation . . . major war would only come about because one party truly sought it, not because of miscalculation.” Miscalculation is best avoided when each side understands the implications of its actions and understands how the other side will interpret and react to those actions. This situation does not exist in today’s environment regarding space systems and space weapons. We lack a common understanding of how space will contribute to, or come to define, potential crises between the United States and China. As both countries seek to define a “new type of great power relationship,” it would be wise to consider how new technologies and operational concepts are best managed during crises. Given both sides’ growing reliance on space systems to achieve their future military and political aims, a lack of understanding comes with great peril. We should strive to build a common framework now, using dialogues during peacetime, before provocative actions in space during a crisis imperil stability here on Earth.

#### Norms are key to crisis stability – building them in advance is goldilocks for deterrence and signaling escalation thresholds

Schaffer 17 [Audrey M. Schaffer, Director for Space Strategy and Plans in the Office of the Under Secretary of Defense for Policy. “The Role of Space Norms in Protection and Defense.” Joint Force Quarterly 87. <https://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-87/jfq-87_88-92_Schaffer.pdf?ver=2017-09-28-092555-747>]

Militaries stand to gain additional unique advantages from widespread adherence to operational space norms. Norms can serve to highlight abnormal behavior, enabling warning of and protection against space threats. Militaries, therefore, should support domestic and international initiatives to shape operational norms of behavior, and they should lend their expertise to norm development efforts. As international space norms take shape, militaries can then analyze abnormal behavior, characterizing those specific behaviors they would consider hostile or aggressive and determining how to respond appropriately in different situations. Militaries may also need to consider whether to evolve operational policies and practices to meet behavioral expectations.

Norms are not a panacea for constraining aggressive, hostile, provocative, or otherwise deliberately irresponsible behavior in outer space. Norms may be enough to dissuade a rational actor from routinely engaging in irresponsible acts, but they will not prevent a committed aggressor from deliberately disrupting or denying space services it deems detrimental to its interests. Norms, however, can play a critical role in detecting and responding to potential threats.

Norms enable early detection of potentially hostile actions or intentions in space. If a satellite exhibits behaviors contrary to operational norms, this is a clear flag to monitor its activities more closely. In times of peace, such activities are likely to be nothing more than an anomaly, which may deserve increased monitoring to preserve spaceflight safety or to mitigate harmful electromagnetic interference. In periods of heightened tensions, norms can form the basis of criteria for early indications and warning of potentially aggressive actions.

To have maximum value in identifying “abnormal” behavior, norms should be widely accepted, such as through voluntary guidelines or international standards. Short of explicit international acceptance, national or allied declaratory policies can communicate those behaviors considered to be a demonstration of hostile intent, shaping tacit understanding of acceptable and unacceptable behaviors. If these agreements and/or communications are clear, and norms are generally observed in times of peace, then we can assume in times of crisis that behavior contrary to norms is most likely a deliberate choice. These assumptions will be a critical input to crisis decisionmaking and, by extension, may have a significant effect on crisis stability. Both an under-reaction and over-reaction to anomalous behaviors could have serious and unintended consequences for international peace and security.

To the extent that the international community can observe what is happening in space, norms will shape world opinion about these behaviors, branding them as simply irresponsible or something more egregious such as potentially unlawful. This will require, at a minimum, compelling evidence based on space situational awareness information from a trusted source. Confirmation from multiple, independent, international, and/or commercial sources of space situational awareness will have a positive and reinforcing effect on detecting bad behavior in outer space. Nations may condemn those who choose to engage in behavior contrary to norms. Condemnation, however, is a double-edged sword; a nation cannot take others to task for violating international norms and simultaneously seek to operate with impunity. At first glance, military space operators may bristle at the implication that norms may constrain their freedom of action in space. Militaries, though, already accept legally binding constraints in all domains. For example, fundamental to the conduct of modern warfare is international humanitarian law (also known as the Law of War or the Law of Armed Conflict),2 which seeks to limit the effects of conflict, especially on noncombatants. Militaries around the world translate international humanitarian law into rules of engagement that guide servicemembers. A future space norms regime could be fashioned similarly to other regimes that govern activities in shared spaces and allow for differences in the application of rules to government or military actors and private actors. For example, Article 3 of the Convention on International Civil Aviation provides that the Convention does not apply to “state” aircraft, though such aircraft are required to exercise due regard for the safety of navigation of civil aviation.3 Article 48 of the Constitution of the International Telecommunication Union likewise provides freedom for military radio installations, but requires them, so far as possible, to observe provisions to prevent harmful interference.4 As in these other domains, safety and sustainability focused space norms, while remaining good and responsible practice no matter the situation, need not be strictly adhered to by militaries at all times. Even if militaries are not expressly required to follow norms, they nonetheless should be prepared to make more deliberate behavioral choices because of how actions inconsistent with norms will be interpreted. This not only requires a strategic and holistic perspective on national security space behaviors, especially in periods of crisis, but also creates opportunities for deliberate signaling. Just as increasing airborne reconnaissance or forward-deploying aircraft carriers can demonstrate interest and stake, so too can maneuvering satellites demonstrate readiness and resolve. Ensuring that the desired signals are received requires significant communication and/or agreement on norms of behavior well in advance of a crisis. Norms also provide clarity to acquirers, operators, and decisionmakers. Similar to how the Department of Defense (DOD) reviews all new weapons systems to ensure they can be operated in accordance with international law, acquirers and operators could look to space norms for guidance on what capabilities and actions would be permissible and under what circumstances. This ensures resources are not expended on systems that political leaders will not employ and provides guidance for operational planners on how to protect and defend space systems in a manner that will be deemed acceptable in different situations.

Norms—or rather the violation thereof—also enable the creation of thresholds, triggers, and rules of engagement that allow militaries to employ passive or active measures to protect threatened space systems. Norms, ironically, may enhance freedom of action when it is needed most. Because norms support the development of criteria for judging hostile acts or hostile intent in space, they enable actions to be taken in self-defense.

#### That requires already developed diplomatic channels and a common vocabulary that only rules of the road for space behavior solves

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The dynamics of nuclear deterrence are well understood from Cold War experience. This is not the case for strategic warfare in the space and cyber domains. Offensive counter-space capabilities are difficult to count or compare in detail, their indirect effects are substantial yet difficult to quantify and capabilities are almost never discussed in public. Space weapons are less visible, and cyberweapons nearly invisible. Over time, the two nuclear superpowers developed venues to discuss strategic arms control and related issues. There is an obvious need for discussions of deterrence and crisis stability in the space and cyber domains, if only to develop a common language and understanding of the issues involved, as well as to provide insight into how major powers understand these concepts and view the opportunities and pitfalls these weapons pose.

In a crisis, the single most important non-military action that can be taken is to have open and reliable channels of communication with an adversary. Communication channels in a crisis have a better chance of success if there is a prior record of constructive interaction, and when leaders are familiar with each other and conversant with the issues involved. This is one of the arguments in support of high-level pursuit of an international code of conduct and the development of rules of the road among major space powers. In the nuclear domain, communication was advanced through information exchanges and dialogues relating to strategic arms control negotiations and scientific exchanges. These avenues are absent in the US-China bilateral relationship, and some are even enjoined by congressional intervention. In many ways, the space domain reflects the nuclear domain in the 1950s, when sporadic dialogue gradually led in subsequent decades to more frequent contact, understanding and, eventually, collaborative ventures. The United States and the Soviet Union had no better alternative than to engage in this journey. The same is true for the United States and China at present.

Signaling in a crisis is important, and is more useful if accompanied by a “diplomatic libretto” to ensure that what is communicated, whether by an action taken or not taken, is understood by the adversary. Signaling is subject to the same kinds of interpretation and misinterpretation in the space arena as it has been in the nuclear domain. Just as elevated nuclear alert levels accompanied the Cuban missile crisis and the 1973 Middle East war, so, too, may signaling in space accompany a significant crisis between the United States and China. Nuclear signaling during the Cold War conveyed in unmistakable terms the seriousness of the stakes involved. In space the differential between signaling and messaging may be much smaller, even though the escalatory potential could be high.

This, too, suggests the value of a space code of conduct and rules of the road among major space powers. Absent clear understandings grounded in routine practices and clarified through channels of communication, signaling in space can be misread by leaders who are mistrustful of one another and inclined to engage in worst-case analysis. Likewise, unintentional or false signals, as in benign equipment failures, also can be destabilizing in a crisis, as participants scrutinize the entrails of every significant event for their meaning and intent. One urgent task for spacefaring countries would be to establish a libretto for space signaling, as well as choreography for the transmission of such signals. The value of these measures ironically was demonstrated by a North Korean space launch in 2013. The launch was in clear violation of UN Security Council resolutions, but North Korea announced the launch in advance, giving the flight path and its purported intent as a space launch. When this test was conducted, and the missile flight path matched the announced flight path, worst cases were discounted, even though this “space launch” contributed to the North Korea’s development of an intercontinental-range missile.

Upgrading the readiness of kinetic-energy ASAT capabilities in a crisis is unlikely to be kept secret, even if national leaders wished to do so. Such preparations are likely to intensify a crisis, even if they were viewed as militarily prudent measures. During a deep crisis, the testing of an ASAT weapon or a weapon system that could readily be employed as an ASAT would be a seriously destabilizing act, even if explicitly meant as a signal. This is in some ways analogous to the portentous signaling option of a demonstration nuclear shot to show resolve, often discussed although never exercised. Rendezvous and proximity operations increasingly will become a feature of space operations. Certain kinds of on-orbit operations could enhance space deterrence and crisis stability, such as replenishment of consumable and on-orbit repairs, by making the satellites at least somewhat more resilient. Other kinds of on-orbit operations, such as activity in the vicinity of adversary space assets, could be destabilizing. Prior notifications, rules of the road and a code of conduct might help clarify peaceful or malicious intent. Keep-out zones adjacent to foreign spacecraft might also be advisable. There is no obvious analogue to such operations in the nuclear domain.

#### The internal link card to Resources (Scenario 3) is about developing norms, which the counterplan solves. Space mining won’t trigger conflict if there’s cooperation

1AC Corinaldesi 21 – (Gianluca, Communications Manager for Duke University Center for International and Global Studies, “WHY WE NEED INTERNATIONAL NORMS TO REGULATE THE SPACE RACE,” [accessed 9/26/21], <https://today.duke.edu/2021/07/why-we-need-international-norms-regulate-space-race>, see)

With the proliferation of human activity in space, humanity risks repeating the mistakes that saw unbridled competition over scarce resources lead to wars, former U.S. Ambassador W. Robert Pearson told a Duke panel on space diplomacy. A growing number of national and private actors are staking a claim on resources that need to operate within a more robust regulatory framework, according to the panel. The event, co-sponsored by Duke in DC, was the first in a new series on space diplomacy organized by the DUCIGS Rethinking Diplomacy program. **Whether this unmanaged competition will lead to future conflicts or to an agreed set of international norms will depend on how quickly diplomacy is able to gather enough consensus, panelists said.** At the event, astrophysicist Benjamin Schmitt said current norms are lacking. The Outer Space Treaty of 1967 doesn’t cover many of the elements of the commercial activity of private enterprises or conventional weapons in space, among other issues, Schmitt said. UNC Asheville’s astronomer Prof. Britt Lundgren moderated the event with Schmitt and Pearson, both fellows of the DUCIGS/Rethinking Diplomacy Program. Pearson said three truths from the European age of global exploration from the 15th century offer lessons for regulating space exploration today: Those countries with access to the new territory became substantial players in global affairs over the next 500 years; conflicts in the new territories did not remain there, but reverberated to come back to produce wars at home; and private enterprise played an enormous role in shaping trade and international relations realities. “**Now as then,” he said, “unmanaged competition can easily lead to conflict.”** The unprecedented escalation of activities, players, and deployment of technologies in lower earth orbit and deeper space “upend the order that we have seen since the end of the Apollo program,” said Benjamin Schmitt, a postdoctoral research fellow and project development scientist at the Harvard-Smithsonian Center for Astrophysics. This expanding space race features both commercial companies investing in space projects — Elon Musk’s Space X, for one — and nation-state programs like the U.S.-led Artemis Accords. This alliance of Western-leaning countries plans to bring humans back to the moon by 2024. It also aims to set regulatory norms that recognize the right of private companies to profit from space resources. Russia and China have announced plans to pursue a competing space program. “This is going to put to the test the international agreements written way back — including the moon agreement of the late ‘70s--that really haven't been put to the test in a real, meaningful way because there has been no human activity on the moon to test it,” Schmitt added. International agreements and treaties take time, Pearson said, easily a decade or more, and in the meantime we need a set of norms of behavior to address the most urgent issues in space, such as preventing the accumulation of orbiting debris from spacecraft parts or defunct satellites posing risk of collisions both in space and on earth (as discussed by Schmitt and Pearson in a recent article in Foreign Policy). Setting rules and best practices on such issues “would create what we call ‘transparent and confidence-building measures’ that might help frame the norms of behavior that would guide us,” Pearson said. Among the emerging issues that the Outer Space Treaty of 1967 — essentially an arms control treaty — did not cover is the placement or use of non-nuclear weapons in space.

### Leadership

#### \*\*\*Debris mitigation and cooperation solves

**Steer 20** – (Dr. Cassandra, CERL Senior Non-Resident Fellow, 1/8, “Why Outer Space Matters for National and International Security,” [accessed 9/24/21], <https://www.law.upenn.edu/live/files/10053-why-outer-space-matters-for-national-and>, see)

**Developing International Space Law for 21st Century Security Issues** One of the greatest challenges to modernizing the legal frameworks that govern conduct in space is the lack of political will surrounding the negotiation of new treaties or other binding norms since the end of the Cold War. Since then, COPUOS has been ineffective in advancing international space law, partly because it is bound by consensus decision-making and States can block any advances 80023for any number of political reasons. **Its ineffectiveness can also be attributed to the fact that geopolitical conditions have shifted in favor of a single nation, the United States, since the end of the Cold War**. This means that even if there is an international desire to move towards more treaties or firmer rules on behavior in outer space, they are unlikely to take place unless the United States wishes to see such developments. Because all nations are so dependent on space and because military tensions in space are on the rise, there is pressure on the United States to determine the kind of leadership it wishes to demonstrate. **The leadership could be either nationalistic or internationalist and for the benefit of all.** International efforts to create a clear legal regime with respect to responsible behavior in outer space have been stymied over recent years. Despite the nearly annual reiteration of the resolution on the Prevention of an Arms Race in Outer Space (PAROS) by the UN General Assembly,78 and despite the call by the UN Group of Government Experts to develop Transparency and Confidence Building Measures (TCBMs),79 there has been little success. The proposal for a Treaty on the Prevention of the Placement of Weapons in Outer Space by Russia and China has been before the Conference for Disarmament in various iterations over the years.80 Because of the requirement of consensus voting and resistance by the United States and some of its allies, the proposal has not succeeded. The arguments against the passage of this treaty are that it is impossible to define what constitutes a “weapon” in space and that it is nearly impossible to verify whether a particular technology is for benign or threatening purposes. Thanks to commercial services tracking the movement of space objects we can gain a fair amount of situational awareness of objects moving through space. However, experts are often left guessing as to the exact purpose of some of those objects. Even with a high level of international compliance with the Registration Convention, it is still nearly impossible to verify that what is being launched aligns with what is being registered. For example, when North Korea began successfully launching objects into orbit in 2015, it duly registered those launches with the UN Office of Outer Space Affairs (UNOOSA). At the time, South Korea objected because it was highly likely that North Korea was developing missile technology in breach of the moratoriums against it (missile technology and rocket launch technology are the same). UNOOSA’s stance was that it had no way of verifying and no powers to intervene, and indeed, it quickly became apparent that North Korea had been developing a conventional weapons capability under the guise of a peaceful space program.81 While verification may be a problem, the United States has not counter-proposed an alternative treaty or mechanism for arms control in space. It appears that the United States simply does not want to be bound by any treaty that might limit its own technological advances and behavior in space.82 In July 2019, the UN hosted a meeting for the Group of Government Experts on further effective measures for the prevention of an arms race in outer space.83 No publication has been released to date on the results of this meeting. It appears, however, that U.S. representatives pushed back against the development of an arms control treaty for space. Representatives of the U.S. Department of State stated openly at a recent international conference that they were instrumental in pushing back against talks on whether any kind of arms control treaty for space could be developed.84 Even the attempted negotiations for a non-binding International Code of Conduct (ICoC) reached a stalemate in 2015. The ICoC was a European initiative that was intended to be a nonbinding document with clear statements of responsible behavior in space and the limits of unacceptable behavior.85 At first, the United States and many of its key allies were in support of the ICoC; however, many developing nations were highly critical of the process, which they considered to be Western-centric, once again ignoring their interests and concerns for equity.86 When the UN hosted a meeting in 2015 to focus on the content of the draft ICoC, the critiques were almost all procedural **except for the United States’ important objection that there was no clear statement about the use of force in space in the case of self-defense.**87 But the ICoC was never intended to be a document that regulated or managed questions of force or military activities in space. The vision was that it could curb irresponsible behavior concerning space debris, access to and use of space, and long-term accountability. Moreover, the right to use force in self-defense is guaranteed in Article 51 of the UN Charter so long as the customary law conditions of necessity and proportionality are fulfilled. Given that Article III of the OST reinforces the application of the UN Charter to all activities in outer space, the presence or lack of a statement regarding the use of force in a non-binding document has no impact on the legal norms that apply. The roadblock faced by the ICoC process created a great sense of disappointment internationally and highlighted what appears to be a general international deadlock in terms of moving forward on space governance for the 21st century. **At a time when concerns for the inevitability of a space-based conflict are increasing, it is important to consider whether and how the international rule of law can play a role in conflict prevention**. It may be that the role of international non-binding norms is even more important than binding ones. Although the ICoC reached a standstill, there are other non-binding instruments that have proven to be very successful like the Debris Mitigation Guidelines mentioned above. There is also some hope with the recent adoption by consensus of the COPUOS Guidelines on the Long-Term Sustainability of Outer Space Activities. These guidelines encourage States to voluntarily adopt updated national legislation and regulations relevant to the peaceful exploration and use of space, share information about space activities to improve safety of operations, observe measures of caution, promote and facilitate international cooperation, and raise awareness of space activities, among others.88 But there is nothing in those guidelines with respect to weaponization, and it is likely that militaries will not respond to such guidelines if they feel in any way limited in their actions.

#### \*\*\*Arms control and diplomacy solves

**Steer 20** – (Dr. Cassandra, CERL Senior Non-Resident Fellow, 1/8, “Why Outer Space Matters for National and International Security,” [accessed 9/24/21], <https://www.law.upenn.edu/live/files/10053-why-outer-space-matters-for-national-and>, see)

**V. Conclusion: Harnessing International Co-operation** There is often a lack of understanding as to the intentions behind any given actor’s activities in outer space, which is a key factor in the cyclical escalation currently taking place in terms of competing policies and technologies seeking to dominate space. This is a unique factor in space security when compared to other domains. There are certain common understandings about specific maritime, air, or land-based maneuvers, depending in large part upon whether there is a state of peace, tension, or armed conflict between the parties concerned. In space, the opposite is true. **An activity may be read by one State as aggressive when it may in fact be intended as benign or even unintentional**. The shift in relations, trust, and communication inherent in any transition from peace to hostility to armed conflict compounds this problem. **If there are terrestrial based tensions between parties, it may become even more difficult to interpret certain behaviors in outer space.** One of the dilemmas faced by leading space powers is the desire to maintain secrecy as to one’s own capabilities while at the same time understanding that lack of transparency is a key factor in the escalatory cycle towards weaponization of space and potential aggressive actions. Military experts tell us that lack of transparency is one of the main causes for escalation during war games or role-play vignettes.125 While it may appear counter-intuitive to support increased cooperation and collaboration, right now the United States and its allies may not be the lead players in the space domain, and it may be prudent to consider policies that support increased international scientific collaboration and other transparency and confidence building measures (TCBMs). **As the number of State and commercial actors in space continues to grow and the capacity of various States develops rapidly, the number of factors that must be considered when seeking to protect satellites and spacecraft from adversarial interference also increases.** The international urgency of this situation is highlighted by the fact that since 2015, the UN General Assembly’s Fourth Committee, which has historically had “peaceful uses of outer space” as part of its portfolio, and the First Committee, which deals with Disarmament and International Security, hold annual joint meetings to discuss these issues. 126 In answer to the increasing complexity of the political landscape in outer space (or the “political spacescape”), we must look beyond traditional alliances. For example, the Five Eyes allies already share a lot of information and intelligence. However, relations with non-Five Eyes allies such as Japan, Germany, and France are also critical in space. Furthermore, countries like India, Poland, and Spain are not part of traditional Western alliances but are becoming more important in the space sector. It behooves the more powerful nations to engage directly with India as it continues to build its space defense capabilities. Such cooperation may occur in the form of space alliances that cross over traditional geopolitical alliances. India wants to partner with both Russia and the United States and already partners with China. Increased international cooperation and transparency must be encouraged in the face of these non-traditional political and commercial partnerships. Commercial actors have a key role in increasing cooperation and transparency because they often support multiple international clients among whom political relations may be unclear or shifting. Some commercial actors have an explicit desire to remain neutral, others have fixed alliances. All these factors may complicate the development of policies that support collaboration and TCBMs. However, it is undeniable that increased data sharing of SSA and the development of mechanisms to clarify intentions behind space-based maneuvers are essential to ensure stability in space. **There is a critical need for clear representations from States as to their position on national and international law applicable to space and well-informed policy positions on the emerging weaponization of space.** Due to the specificity of the space domain, specialized expertise must be provided to decision-makers, and interdisciplinary opinions must be sought from a multitude of stakeholders. Finding answers to these questions requires interdisciplinary engagement and collaboration, not only among substantive experts in different fields but also between public agencies and private commercial entities. **This is not merely aspirational**. There are lessons to be learned from the Cold War era when scientists pushed for increased collaboration even during periods of high tension between the two superpowers. There is a need for exchange of information and evidence-based policy, particularly in terms of SSA, cross-domain thinking, minimization of the escalatory cycle, and appreciation of the long-term effects of any space-based conflict. **The challenge will be knowing how to balance this against the need to protect one’s own space assets and the need to maintain secrecy about one’s own capabilities. Space is a unique domain and requires a unique way of thinking about policy and strategy.**

### Solvency

#### The reason their author thinks that antitrust is key is because we need regulation and to address problems.

**Lucas-Rhimbassen and Rapp 21** – (Maria - Research Fellow with Open Lunar & PhD Candidate in Space Law at the University of Toulouse and CNES, Lucien - tenured Affiliate Professor at the Law School of University Toulouse1-Capitole, 6/25, “New space property age: at the crossroads of space commons, commodities and competition,” [accessed 9/24/21], <https://www.emerald.com/insight/content/doi/10.1108/JPPEL-02-2021-0007/full/html>, see)

9**. Competition law** New technologies, globalization and deregulation helped competition law to make its way into the derivatives industry, to compensate for decreasing agency oversight because of a long tradition of jurisprudence in that sense (Weinstein, 2019). The US Commodities Futures Modernization Act (CMFA) of 2000 both deregulated to a certain extent the derivate market while opening the door to antitrust measures (Falvey, 2006) as shown here: ANTITRUST CONSIDERATIONS. – Unless necessary or appropriate to achieve the purposes of this Act: [a] board of trade shall endeavor to avoid – (A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden in trading on the contract market. Indeed, increasing competitive market dynamics and commodity exchanges call for antitrust enforcement; however, it remains unclear as to how this will happen and to what degree. Nonetheless, the Commodities Futures Trade Commission (CFTC), created in 1974, provided for some antitrust authority vs anti-competitive conduct via its “antitrust considerations” within the 2010 Dodd-Frank Act [19] as is explained below, to help break collusive behavior and cartelization of the oligopolistic derivatives market in the highly increasing concentrated financial sector [20]: One of Dodd-Frank’s central goals was to ensure that most derivatives transactions are centrally cleared (thereby reducing systemic risk) and traded on exchanges (reducing pricing opacity and promoting competition). The increased significance of derivatives clearinghouses and exchanges in the Dodd-Frank regulatory scheme raises the danger that firms controlling these entities could exclude derivatives-trading rivals who need access to complete their swaps. Such conduct could lead to reduced competition and higher prices in derivatives trading. Big-bank control of clearinghouses and exchanges also may give those firms the opportunity to manipulate the types of derivatives contracts that are exchange traded and centrally cleared, pushing certain contracts into the over-the-counter markets where the banks can charge higher prices. To the extent central clearing of derivatives trades reduces systemic risk (the key premise of Dodd-Frank’s derivatives reforms), this outcome may threaten systemic soundness. Despite these risks, antitrust immunity may shield such conduct from attack, leaving sector regulators as the only bulwark against anticompetitive activity in these markets (Weinstein, 2019, p. 6). **This measure proved inefficient, as it did not cover a major loophole** (swap dealers [21**]) and its reach was rather limited.** **Therefore, it is argued that the scope of the antitrust considerations should be broadened** by Congress by amending the 1936 Commodities Exchange Act (CEA) – amended several times since [22] – **to “prohibit any person who causes (or attempts to cause) unreasonable restraints of trade or material anticompetitive burdens in the markets for derivatives.”** This amendment should also prohibit both in-house and inter-Exchanges anti-competitive and anti-ethical behavior such as unfair competition and derivatives price-fixing conspiracies (Scopino, 2016). Weinstein concludes in that sense: Concentration appears to be increasing in the financial sector and the broader economy. In this context, the Supreme Court’s restrictions on antitrust enforcement in regulated markets are especially concerning. This concern is heightened by evidence that sector regulators generally are poorly suited to protecting competition and reluctant to take on that job. This Article has proposed a regulatory-design solution to the challenge of protecting competition in regulated markets. Structural regulation of potential competitive bottlenecks can adequately preserve competition while allowing sector regulators to focus on their core missions. **When executed properly, this approach may be superior to active sector-regulator competition enforcement and even to traditional antitrust enforcement** (Weinstein, 2019, p. 59). For this reason, antitrust has the potential for further regulatory impact and reach in the commodities sector and we posit that this could be extrapolated to space in a more complex fashion, as space is a peculiarly vast and complex domain, as has been shown throughout this paper. **10. Space antitrust** In the light of the previous section, this paper argues that space antitrust could provide for both a pragmatic and efficient manner to contain the volatile forces of a space commodities market, as explained supra. Centralized global space governance is a vast, multi-generational project, presumably in the works and a manifestation of its shapes has yet to appear. In the meantime, however, alternate methods must be investigated. Decentralized models are surfacing from a bottom-up approach and polycentricity is emerging organically. How these polycentric forces will interact, compete, cooperate and evolve **can be facilitated by a “space” antitrust framework based on the OST principles,** which cover interactions relevant to an ethical “space antitrust” and sustainable space ecosystem. These principles, which all have an incidence on competition, are benefit sharing, equality of access, non- discrimination, non-harmful interference, due regard, cooperation and fair competition. Future analysis as to their incidence is necessary to determine their interaction with an antitrust framework and how these interactions are to be governed. Polycentricity is timely given the complexities of systems of systems in space. It could successfully work for hand in hand with space antitrust to ensure that the transnational lex mercatoria and the commoditization of the space market do not collide with the higher ethical principles, which international space law relied on for half a century. 11. Discussion Traditionally, international space law, as opposed to national space law, is not equipped to deal directly with the private sector**. However, antitrust has the tools to do so**. The broader range of space antitrust might help delve further down into the elusive and transnational commercial law, which is likely to accelerate in the near future and multiply interest around the commodification of the space market. As suggested throughout this paper, space concentration, leading to monopolies, is a likely outcome of the further development of space commerce. To mitigate the risks of monopolization, collusive and of other anti-competitive behavior, especially when considering the particular nature of space resources, to be exchanged on the emerging space-based market – including the complex and specialized services attendant thereto – **special ethical and legal safeguards must be put in place** to incentivize competition while containing the risks of fragmentation mentioned previously. This is important to enable a healthy expansion of the ecosystem. Our emphasis on the market forces at play is rooted in the assumption that through the observation of the current trends of commercialization and of the growing number of non-traditional actors (either public or private) stemming from old and from new space-faring nations, it is easier to anticipate risk and to provide supporting regulatory proposals. Our suggested approach toward an adaptive and polycentric governance model attempts to resolve some of these challenges, by allowing for a bottom-up framework that fosters commercialization, to surface organically, from the players, with minimal outside intervention. Our goal is to prevent the risk of privatization and commercialization that might gradually erode the ethical principles of international space law. To use the analogy of the carrot and the stick in striking a balance between regulatory intervention and free initiative, we prefer the carrot approach. Incentivizing the private sector to compete around ethically balanced markets has the potential to unlock new and unforeseen forces of antitrust in space to channel the fragmentation of forces in a sustainable manner while ensuring the respect of the conventional set of ethical principles to which many corporations already subscribe to in the context of their corporate compliance programs. Here we would an additional layer of space law higher ethical principles (such as enumerated supra) and investigate into further incentivizing soft law implementations. These higher principles are rooted in system interconnectivity and complexity, and have direct consequences on life, planetary protection, environmental aspects, intergenerational equity, etc. In approaching these issues through the angle of antitrust, we argue that antitrust is bound to evolve and to adapt, both in Space and on Earth. Furthermore, a broad space antitrust scope might also benefit from polycentric governance when concrete self-determination claims would manifest, such as Elon Musk’s self-governing principles on Mars. Any future space colonies (or settlements) would either rely on their own resources or would depend on the import and the export of resources, and therefore, on resource commodification. **It then follows that having an ethical space antitrust regime well in place appears as a foreseeable necessity**. An ethical space antitrust should also consider non-market factors such as the potential new rights granted to specific resources and regulate accordingly (e.g. the equivalent in space of legal rights to natural resources, etc.). Without such an ethical regime framework harnessing uncoordinated competitive forces, one possible outcome would be the dystopia described by Andy Weir’ Artemis economy on the Moon based on “soft landing grams” credits directly applied to one’s consumption of oxygen. A bleak perspective. **Finally, antitrust is an adequate response to space property and resources, as property law is, at its basis, domestic law and so is competition law**. They can evolve in parallel in the space sector and merge into an international framework, adapted to the international space law forum. **There is no internationally harmonized antitrust framework as of this writing, except non-binding UN guidelines. Perhaps, a “space antitrust” would help bridge that gap and contribute to reducing growing issues such as “forum shopping,” fragmentation and “conflict of laws.”** 12. Limitations and further research While this paper is at the exploratory level, further research is necessary in determining the scope of antitrust in space, property and commodities and how ethics can play a role specifically, at the implementation level. Case studies should be conducted with a clear methodology. Moreover, the research must include other financial aspects such as spacebased assets and securities, notably the Space Assets Protocol of the UNIDROIT Cape Town Convention. Finally, more work must be done in terms of international/transnational recommendations for antitrust, as there is no internationally harmonized antitrust governance or regime and it remains heavily politicized – or not enough, depending on the school of thought (Teachout, 2020, p. 212). **13. Conclusion** This paper explored a roadmap into managing fragmentation triggered by the accelerated development of the outer space ecosystem and the rise in non-traditional space actors, be they public or private. International space law no longer suffices to cope with all the new actors, and therefore, transnational alternates are recommended. This paper recommends a transformed antitrust regime, adapted to space, based on the corpus juris spatialis ethics. This could help preventing the risk of space law erosion while privatization and commercialization of space are trending and potentially leading to the commodification of the space market and ecosystem, while space lawyers are still debating internationally as per the principle of non-appropriation and as per what a “space object” should consist of and what property rights could be applicable in space. An interdisciplinary approach could prove very helpful to address this problem. For instance, E. Ostrom’s work on classifying the goods into four categories from an economic standpoint might help space lawyers into classifying space goods once and for all and this could serve as a catalyst for polycentric space governance, governed inter alia, by competing forces. However, these competing forces should rather be seen as the dark matter in a space ecosystem, enabling sustainable synergies and interactions, with intergenerational equity in mind. This would be essential to avoid unregulated speculation based on space commodities, which could prove to be more detrimental in such an extreme environment as space. For instance, speculation benefits from climate change impact on crops and other commodities on Earth. We are all too familiar with the consequences. Imagine what space weather-based speculation could do in space. It could obliterate entire economies at once. One could argue that either space antitrust monitors the space commoditization closely, either space derivatives should be significantly regulated.

## Ex

#### No one’s going to war over a downed satellite

Bowen 18 [Bleddyn Bowen, Lecturer in International Relations at the University of Leicester. The Art of Space Deterrence. February 20, 2018. https://www.europeanleadershipnetwork.org/commentary/the-art-of-space-deterrence/]

Space is often an afterthought or a miscellaneous ancillary in the grand strategic views of top-level decision-makers. A president may not care that one satellite may be lost or go dark; it may cause panic and Twitter-based hysteria for the space community, of course. But the terrestrial context and consequences, as well as the political stakes and symbolism of any exchange of hostilities in space matters more. The political and media dimension can magnify or minimise the perceived consequences of losing specific satellites out of all proportion to their actual strategic effect.

#### Space weapon deployment doesn’t cause an arms race or increase chance of war

Lopez 12 [LAURA DELGADO LO´ PEZ, Institute for Global Environmental Strategies, Arlington, Virginia. Astropolitics. "Predicting an Arms Race in Space: Problematic Assumptions for Space Arms Control." https://www.tandfonline.com/doi/full/10.1080/14777622.2012.647391]

The previous discussion demonstrates that although a globalized space arms race could follow U.S. deployment of space weapons, it is also plausible and more likely that it may not happen at all. As Mueller states: ‘‘In the end, most of the inevitability arguments are weak.’’62 The assumptions discussed here break the argument into a series of debatable maxims that other scholars have also considered. Hays, for instance, counters the inevitability argument by pointing out that previous ASAT tests did not have this purported destabilizing effect, to which we can add that even after the Chinese ASAT test, neither Russia nor the United States, who would be both capable and more politically likely to launch space weapons, moved forward in that direction.63 Although some may draw attention to the recent wake-up calls in order to underline a sense of urgency, one should also recall that when it seemed truly inevitable before, it did not happen either. In his detailed account of military space developments from 1945 to 1984, Paul Stares described how superpowers’ assessment of the value of space weapons shifted, with a ‘‘hiatus in testing’’ reflecting the attractiveness of satellites as military targets.64 In this changed landscape, Stares also assumed the inevitability argument, claiming that ‘‘the chances of space remaining a ‘sanctuary’ [absence of weapons] into the 21st century appear today to be remote.’’65 Perhaps the conditions are more conducive now, but the important point to be reiterated is that the outcome is not inevitable, and that any such prediction must be undertaken with caution.

One of the most prominent theorists to propose an alternate picture and pair it with an aggressive pro-space weapons stance is Everett Dolman. In his Astropolitik theory, Dolman summarizes the steps that the United States must take to assume control of space, particularly through withdrawal from the current space regime.66 This move, he argues, would benefit not only the United States, but also the rest of the world, since having a democracy controlling space is a catalyst for peace.67 Elsewhere, he writes: ‘‘Only a liberal world hegemon would be able to practice the restraint necessary to maintain its preponderant balance of hegemonic power without resorting to an attempt at empire.’’68 Accordingly, he believes that this strategy would be ‘‘perceived correctly as an attempt at continuing U.S. hegemony,’’69 but that other countries, correctly assessing U.S. leadership in space, would not seek to deploy their own systems.

## Leadership

### 2NC---!D---Heg

#### 2---alternative explanations for stability outweigh.

Fettweis 20, Associate Professor of Political Science at Tulane University.. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy)

Many of the factors that contribute to geopolitical fear — Manichaeism, religiosity, various vested interests, and neoconservatism — also help explain American exceptionalism and the indispensability fallacy. And unipolarity makes hegemonic delusions possible. With the great power of the United States comes a sense of great responsibility: to serve and protect humanity, to drive history in positive directions. More than any other single factor, the people of the United States tend to believe that they are indispensable because they are powerful, and power tends to blind states to their limitations. “Wealth shapes our international behavior and our image,” observed Derek Leebaert. “It brings with it the freedom to make wide‐​ranging choices well beyond common sense.“49 It is quite likely that the world does not need the United States to enforce peace. In fact, if virtually any of the overlapping and mutually reinforcing explanations for the current stability are correct, the trends in international security may well prove difficult to reverse. None of the contributing factors that are commonly suggested (economic development, complex interdependence, nuclear weapons, international institutions, democracy, shifting global norms on war) seem poised to disappear any time soon.50 The world will probably continue its peaceful ways for the near future, at the very least, no matter what the United States chooses to do or not do. As Robert Jervis concluded while pondering the likely effects of U.S. restraint on decisions made in foreign capitals, “It is very unlikely that pulling off the American security blanket would lead to thoughts of war.“51 The United States will remain fundamentally safe no matter what it does — in other words, despite widespread beliefs in its inherent indispensability to the contrary.

### 2NC---!D---Leadership

#### U.S. primacy is ineffective and permanently tarnished.

Porter 19, Professor of International Security and Strategy at the University of Birmingham. He is also Senior Associate Fellow at the Royal United Services Institute, London and a Fellow of the Quincy Institute for Responsible Statecraft. (Patrick Porter (2019) “Advice for a Dark Age: Managing Great Power Competition”, The Washington Quarterly, 42:1, 7-25, <https://doi.org/10.1080/0163660X.2019.1590079>)

American grand strategy since 1945 has been one of “primacy,” to secure itself by acquiring unrivalled dominance and denying key regions to hostile powers. Against hopes to the contrary, Washington’s consolidation of its primacy since the collapse of the Soviet Union has not created an international order content to submit to its will. Despite—or because of—expanded alliances in Europe and Asia, a globe-girdling military presence, wars of regime change and occupation, and the spread of capitalism on Washington’s terms, U.S. rivals have amassed greater capability and increased appetite for risk-taking. Additionally, U.S. allies are hedging—for instance through their participation in the Asia Infrastructure Investment Bank (AIIB) or their opposition to Washington’s abrogation of the JCPOA nuclear agreement and its new sanctions against Iran, all over the United States’urging.2Emerging powers, such as India, also hedge, sharing intelligence with Washington while buying S-400 missiles from Russia and muting criticism of Beijing.3And American allies in Asia are investing increasingly heavily in defense. Though this has come partly through U.S. urging, it could tip potentially into an arms race.

The United States is not willingly accepting these developments that under-mine its primacy. It neither makes major concessions nor willingly shares power. Despite President Donald Trump’s campaign rhetoric, the United States on his watch pursues a more illiberal version of dominance, enlarging its footprint in Europe, the Middle East and Asia.4Trump has drawn down a small garrison in Syria, but increased the overall U.S. presence in the Gulf, and his administration is attempting to isolate and contain Iran. Trump’s domestic opponents, too, show no signs of renouncing the pursuit of primacy abroad. Apart from opposing his trade wars, they denounce the White House for being too accommodating to adversaries and not supportive enough of allies. With escalating rivalries under way against two Eurasian heavyweights, Russia and China, and potential confrontations with two designated proliferation “rogues” in Iran, North Korea and possibly Venezuela, the United States is in danger of being locked into combat with five adversaries simultaneously.

# 1NR

## K---Cap

### 1NR---Perm

## CP---Regulation

### 2AC--AT Condo

## DA---FTC

### 1NR---! 2AC 1

#### 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 primacy

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.

### 1NR---AT: 2AC 2 & 3

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

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

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

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

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

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

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

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

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

#### Law enforcement will be focused on health care now.

Shryock 21, analyst @ Medical Economics (Todd, “Hospital consolidations in crosshairs of Biden administration,” *Medical Economics*, <https://www.medicaleconomics.com/view/hospital-consolidations-in-crosshairs-of-biden-administration>)

As part of a sweeping executive order, President Biden addressed hospital mergers and their sometimes negative effects on patients and the health care system. The order specifies that the Justice Department and Federal Trade Commission review and revise their merger guidelines to ensure patients are not harmed by the mergers. The administration points out that hospital consolidation has hit rural areas especially hard, leaving many patients without good options for convenient and affordable health care services. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year during the pandemic.

#### Top of the agenda

Mitchell 21 (Joseph, “FTC cracks down on health tech: 7 things to know,” <https://www.beckershospitalreview.com/healthcare-information-technology/ftc-cracks-down-on-health-tech-7-things-to-know.html>)

Healthcare's data privacy and monopoly concerns top the FTC's agenda as its chair, Lisa Khan, completes her first two months in the role, according to the report. Seven things to know A trial kicked off Aug. 24 examining monopoly concerns in cancer screening technology. At issue is the acquisition of startup biotech firm Grail by genetic sequencing giant Illumina. The case was in the works before Ms. Khan's confirmation, but it showcases that health IT is part of the FTC's agenda, Politico reported. The way healthcare and tech companies handle sensitive data “is an area that I'm sure [Ms. Khan’s] very, very interested in," said Jessica Rich, former director of the FTC’s consumer protection bureau. The FTC will also closely watch hospital mergers, Ms. Rich said. "I expect her and the commission to take a very bold approach to what constitutes harm for both," Ms. Rich said. "I expect her to pay close attention to algorithms and potential discrimination in healthcare, both denials and pricing issues which the FTC's laws can address."

### 1NR---AT: 2AC 3 & 4

#### New enforcement priorities trigger a tradeoff from health care

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>)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony: “The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.” I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making. The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

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

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

Biden pushed on antitrust

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

#### Can’t solve the link, even if the DoD consults the FTC has to expend a ton of resources

Macy & Lee 17, \*Creighton J., Attorney, Baker McKenzie. Formerly served as chief of staff and senior counsel in the Department of Justice Antitrust Division, working as a senior advisor to the acting assistant attorney general on civil and criminal antitrust enforcement and policy matters, as well as budget and personnel issues. \*\*Craig Y., Attorney, Baker McKenzie. Leads the Firm’s global cartel task force (12-14-2017, "When Merger Review Turns Criminal", *American Bar Association*, https://www.americanbar.org/groups/business\_law/publications/blt/2017/12/07\_lee/)

But that separation of criminal and civil enforcement sections at the Antitrust Division does not create walls or silos. The different criminal offices often work together on large investigations and trials. Similarly, the size of many civil investigations requires pulling resources from the various civil sections, as well as from the Antitrust Division’s Appellate, International, and Competition Policy and Advocacy sections. But the collaboration does not end there. Coordination between the civil and criminal sections is the norm. Section managers meet regularly to discuss matters and often consult on an informal basis. Cross‑pollination occurs at the trial attorney level as attorneys are detailed to other sections for specific matters or periods of time. And understanding this collaboration between the civil and criminal sections is vital to attorneys and their clients subject to the merger review process. A recent case not only shows how in sync the Antitrust Division’s criminal and civil sections are, but also highlights the implications of that collaboration.

In December 2014, two packaged seafood companies announced their proposed merger. As is customary to the review process, the parties submitted documents to one of the Antitrust Division’s civil sections. What followed was anything but routine. However, based on the level of collaboration within the Antitrust Division, it should not have been unexpected.

From document review to charges for price-fixing

The Antitrust Division’s civil attorneys reviewed the documents submitted by the parties and uncovered information that raised concerns of price‑fixing. When the parties walked away from the deal on December 3, 2015, then-Assistant Attorney General Bill Baer’s statement in the press release made a veiled reference to their problematic documents. He said, “Our investigation convinced us—and the parties knew or should have known from the get-go—that the market is not functioning competitively today, and further consolidation would only make things worse.”

The parties’ abandonment of the deal did not end the Antitrust Division’s investigation. Instead, the civil attorneys conducting the merger review shared their findings with their criminal counterparts. A criminal section proceeded to open a price‑fixing investigation based on the shared materials. That investigation has borne fruit and is ongoing. To date, three individuals and one company have been charged for participation in a price‑fixing conspiracy. Criminal antitrust violations, such as price-fixing, have serious implications. Not only are the criminal penalties substantial, but companies can be subject to civil suits with treble damages (15 U.S.C. § 15.).

For individuals, the maximum penalties are 10 years in prison and a $1 million fine. For corporations, the maximum fine is $100 million. Fines for both individuals and corporations can exceed the statutory maximum amount by up to twice the gain derived or twice the loss by victims. See, e.g., Price Fixing, Bid Rigging and Market Allocation: An Antitrust Primer, Department of Justice Antitrust Division, available at https://www.justice.gov/atr/priceifxing-bid-rigging-and-market-al location-schemes (discussing the Sherman Act).

While it is not public what specific information was contained in the documents that raised the attention of the reviewing attorneys, or exactly how the process happened, the Antitrust Division did state that the criminal investigation was triggered by “information and party materials produced in the ordinary course of business.” Until more information is revealed, several questions remain, including whether similar criminal investigations based on documents submitted for merger review could be waiting to surface.

The packaged seafood matter is not the first criminal case to stem from a civil investigation and likely will not be the last. The hand‑in‑hand coordination between the civil and criminal sections of the Antitrust Division will continue. Companies need to be increasingly aware of the risks that ordinary course documents present, not just in impacting merger approval but also in criminal implications. Merger review does not exist in a vacuum. Once documents fall into the Antitrust Division’s (or FTC’s) hands, parties can expect that they will be closely reviewed with an eye toward both civil and criminal actions. Documents always tell a story—and attorneys need to be sure that the story told is one to support a proposed deal and not a criminal investigation.

Similarly, the FTC and Antitrust Division share a close working relationship. We will continue to explore and monitor the collaboration between those two agencies as well as with state attorneys general. We also plan to address the collaboration among competition agencies around the world. Stay tuned.

### 1NR---AT: 2AC 5

#### The plan requires significant resources---that trades off with other areas

DOJ 15 (COMPETITION AND MONOPOLY: SINGLE-FIRM CONDUCT UNDER SECTION 2 OF THE SHERMAN ACT : CHAPTER 9, originally published in 2008, updated in 2015, https://www.justice.gov/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-9)

The rapid changes and innovation typical of new-economy industries raise the question whether current antitrust enforcement mechanisms, which often involve lengthy investigation, followed by complex, time-consuming trials, are suitable for implementing effective remedies that adequately protect competition. Developing an equitable remedy in these markets has been likened to "trying to shoe a galloping horse."(116) One panelist observed that "the system seems broken in terms of speed, cost, and effectiveness of remedies."(117) Professor Hovenkamp explained the problem in the context of the Microsoft litigation: "[T]he legal wheels turn far too slowly. By the time each round of Microsoft litigation had produced a 'cure,' the victim was already dead."(118) Similar criticisms were directed to the long-running litigation against IBM. A panelist concluded that the IBM case highlights the "need for speed" and demonstrates "how the industry and the technology tend to change in a manner that by the time you are done, everything you thought when you started the case is irrelevant."(119) The time required for litigation may present particularly acute concerns in new-economy industries because in many instances, if anticompetitive conduct has eliminated potential competitors, the opportunity for robust competition may be difficult to recreate. As one panelist explained, in fast-moving, high-technology markets, "it's extremely difficult to resuscitate a competitor, after the competitor has been crushed. The convergence of factors that produced a competitive challenge before it was anticompetitively excluded[] may never re-appear, not in the same fashion, anyway."(120) To be sure, antitrust litigation ideally would be more rapid, reaching resolution and a remedy before the markets change significantly. In some cases, this issue can be addressed by consent decrees entered into before litigation; in others, it may suggest seeking preliminary injunctive relief. More generally, the effort to develop clear, objective standards for liability discussed in chapters 1-8 can help address this concern. The clearer and more objective the standard for liability, the more efficient and effective the antitrust enforcement. Violations are more likely to be deterred, litigation is likely to be faster and less expensive, and parties are more likely to reach prompt and effective settlements. Once an appropriate judgment has been issued, steps can be taken to ensure the efficacy of relief in dynamic industries. One possibility is to fashion remedies that go beyond the precise conduct at issue. For example, some panelists suggested that, before the Microsoft litigation ended, "the browser wars were over."(121) For that reason, the remedies at least partially focused on protecting competition that might arise through future middleware technologies. Of course, even when an industry's dynamic nature makes effective injunctive relief problematic, antitrust enforcement continues to play an important role. Thus, the Microsoft court recognized that, while the passage of time in fast-changing settings threatens enormous practical difficulties for courts considering the appropriate measure of relief . . . . [e]ven in those cases where forward-looking remedies appear limited, the Government will continue to have an interest in defining the contours of the antitrust laws so that law-abiding firms will have a clear sense of what is permissible and what is not."(122) The same potential for dynamic change between complaint and judgment that complicates crafting a remedy in the first place raises further complexity after a remedy is in place. Panelists warned that when technology is changing rapidly, a fixed remedy running years into the future may have damaging, unintended consequences.(123) Panelists' general admonitions that decrees should provide adequate flexibility(124) and should run no longer than necessary for re-establishing the opportunity for competition are therefore particularly applicable to cases in technologically dynamic settings.(125) V. Monetary Remedies The antitrust-remedial system in the United States is not limited to conduct and structural remedies. There are also a variety of monetary remedies available that can both deter future anticompetitive conduct and help restore injured parties to the position they would have been in without the unlawful conduct. Private plaintiffs in antitrust cases can seek monetary damages, which by law are trebled automatically.(126) Similarly, the federal government may seek treble damages in instances in which anticompetitive conduct harmed the United States itself,(127) and the states may recover damages they suffered themselves as well as on behalf of injured citizens in their parens patriae capacity.(128) In addition, certain monetary equitable remedies, such as disgorgement and restitution, may be available.(129) The antitrust enforcement agencies, however, do not have the authority to impose civil fines. Private Monetary Remedies--Treble Damages The U.S. antitrust laws permit private plaintiffs to recover three times the damages they prove they have suffered. Although treble damages can increase deterrence and overall enforcement, a number of observers argue that, in the section 2 context, treble damages also can chill procompetitive conduct and that the rationale for trebling is weaker here than in other contexts. As explained below, these concerns have led to questions about the appropriateness of treble damages in private section 2 cases. A successful plaintiff in a section 2 case is entitled to recover "threefold the damages by him sustained."(130) Plaintiffs also may recover attorneys' fees and, in limited circumstances, pre-judgment interest.(131) These private monetary remedies provide incentives for private enforcement and advance at least three important goals: deterrence, punishment of wrongdoers, and compensation of victims.(132) Trebling damages generally increases deterrence by compensating for the possibility that anticompetitive conduct will not be detected and prosecuted.(133) Likewise, the possibility of winning multiple damages enhances plaintiffs' incentives to seek out and detect anticompetitive conduct and to bear the time, expense, and uncertainty of bringing suit.(134) The Department believes that private actions and resulting monetary remedies play an important role in overall antitrust enforcement. The government has finite resources to prosecute antitrust violations; private enforcement supplements these efforts. Indeed, private plaintiffs, rather than the government, undertake a significant portion of antitrust enforcement, including section 2 enforcement.(135) Moreover, by deterring violations, private damages can reduce the need for government enforcement in the first instance.

#### Antitrust enforcement uses FTC enforcement

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.

### 1NR---AT: 2AC 6

#### Fiat:

#### 2---political backlash and partisanship undermine anti-trust enforcement via agency appointments, judge selection, and partisan pressures.

Kovacic 14, Global Competition Professor of Law and Policy @ George Washington (William, Politics and Partisanship in U.S. Antitrust Enforcement, *Antitrust Law Journal*, 2014, Vol. 79, No. 2 (2014), pp. 687-711)

What accounts for these and other notable variations in federal enforcement activity? One common explanation is "politics"9 - a shorthand expression for the capacity of elections and elected officials to bend the antitrust enforcement system to serve a set of policy preferences or constituent desires. By this view, the political process affects enforcement through presidential elections, the selection of agency leadership, the intervention of executive branch and congressional officials in routine agency decision making, and the appointment of federal judges who hear antitrust cases. It is unsurprising that a regulatory system rich in power and prosecutorial discretion would have some connection to the political process. The substantial economic significance of the statutes whose enforcement is entrusted to the DOJ and the FTC ensures that elected officials will study what these agencies do and sometimes seek to influence the exercise of their prosecutorial authority. It is also difficult to imagine that a nation would give significant responsibility to law enforcement bodies without some means for elected officials to hold agency officials to account for their policy choices. Expansive grants of authority tend to come with accountability strings attached. For academics, practitioners, and public officials, the question is not whether political forces surround the DOJ and the FTC, or whether decisions by elected officials sometimes influence agency behavior. They assuredly do.11 The relevant queries are how, and how much? This Article addresses these questions by examining one dimension of the relationship between the federal antitrust agencies and the political process. It discusses how electoral politics can increase the influence of partisanship in the operation of the DOJ and the FTC. As used in this Article, partisanship is a determined commitment to party goals and causes. It manifests itself in a tendency to exaggerate the virtues of the party and to disregard or devalue the accomplishments of political rivals. Through the political appointment of the DOJ and FTC leadership, partisanship can spill over into the formulation and presentation of agency policy. As will be shown, partisanship can have destructive effects. Among other consequences, partisan attitudes can lead officials to act in ways that serve party goals at the expense of the agency's programs and reputation. The partisan tends to overlook how continuity of policy and incremental improvements have strengthened the DOJ and FTC antitrust programs regardless of which party controls the White House.12 Partisanship impedes the development of a norm that recognizes the importance of cumulative improvements, respects past contributions to agency effectiveness regardless of party origin, and encourages long-term investments that enhance the agency's capability and reputation.13 The striving for electoral success can beget partisanship, and, by eroding support for a norm that encourages cumulative investments for improvement over the long term, partisan attitudes can diminish agency effectiveness. In this sense, politics can influence federal antitrust enforcement, and influence it negatively.