# 2nc

## Sunset CP

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#### The counterplan can solve *any* antitrust exemption written into law by congress.

Anne McGinnis, JD Michigan, ’14, "Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: a Proposal for Reform," University of Michigan Journal of Law Reform 47, no. 2 (Winter 2014): 529-[vi]

Together, the Sherman Act, the Clayton Act, and the Federal Trade Commission Act bar anticompetitive behavior involving trade or commerce. Because modern courts construe trade or commerce broadly, almost any conduct that involves an exchange of money or bartering for a good or service is subject to antitrust law.37 To prevent antitrust law's broad application in areas where they have felt it unwarranted, the courts and Congress have read and written numerous exemptions into antitrust law over the past eighty years.38 For example, the Supreme Court created Noerr-Pennington immunity to protect political lobbying efforts from antitrust challenge,39 Parker immunity to immunize state regulatory action from scrutiny, 40 and Koegh immunity to prohibit private treble damages suits where the plaintiff claims that a rate submitted to and approved by a regulator violated antitrust law.

The majority of antitrust exemptions, however, were written into law by Congress. A leading Monograph by the American Bar Association Section of Antitrust Law organizes these statutory exemptions into three general categories.42 For the sake of simplicity, this Note will use that organizational system.

The first category consists of exemptions for an entire industry or type of activity in favor of state or national regulation. For example, the Shipping Act of 1916 exempted the ocean shipping industry from antitrust scrutiny,4 and the Transportation Act of 1920 immunized railroad mergers and other agreements.4 4 In 1945, Congress passed the McCarran-Ferguson Act, immunizing the "business of insurance" from federal antitrust scrutiny and leaving regulation to the states.45 Congress enacted the last broad statutory exemptions in the mid-1940s.46 As the era of deregulation took hold in the 1950s and 1960s, most of the exemptions in this category were repealed or substantially modified. Today, only five such exemptions remain.47 Each remaining exemption provides for oversight of an industry through regulation in theory, although in practice oversight is often limited.48

The second category consists of exemptions for specific transactions, practices, or events that are thought to be socially desirable or economically beneficial. As of 2006, nineteen exemptions fell into this category.49 Some authorize naked price fixing or market allocation, 50 while others allow joint ventures or sales agreements that would otherwise be illegal.51 Two immunize a specific merger or types of mergers. 52 Some of the exemptions in this category replace antitrust liability with regulatory oversight,53 while others do not.5 4 Some of these exemptions, like the Anti-Hog Cholera Serum Act,5 5 appear to have little relevance today; however, this category of exemptions is the only one that continues to expand.56 One frequently cited example of an exemption that falls into this category is the Newspaper Preservation Act.5 7 The Act immunizes joint ventures between newspapers that contain otherwise unlawful price-fixing agreements, market allocations, and revenue pooling, provided that one of the newspapers in the joint venture is failing. The Act was passed because legislators believed that it was important for society to have a large number of local newspapers with different editorial viewpoints, and many had begun to fail.58 The third category of statutory exemptions includes limited modifications of antitrust law for the benefit of some class of activity.59 The exemptions in this category often modify the remedy that a plaintiff may seek or the substantive standard the plaintiff must meet in order to prove a breach of antitrust law.60 Sometimes, the substantive standard ordered by Congress effectively operates as complete immunity. For example, the Soft Drink Interbrand Competition Act required courts to examine horizontal market division agreements between soft drink bottlers and producers using a rule of reason-like analysis. 61 But, because the Act also requires plaintiffs to show a lack of "substantial and effective competition" among bottlers, courts have determined that this additional requirement creates effective immunity for soft drink trademark holders and their bottlers. 62

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#### Including the plan’s undemocratic process signal causes a drift away from antitrust’s democratic roots. The process of antitrust reform overdetermines its content – star this card.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

As Professor First and I stated in Antitrust's Democracy Deficit:

The institutional aspects of today's antitrust enterprise . . . are increasingly out of balance, threatening the democratic, economic, and political goals of the antitrust laws. The shift that [Richard] Hofstadter first described has led to an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability. Some of this professional control is inevitable, of course, because antitrust is a system of legal ordering of economic relationships. But antitrust is also public law designed to serve public ends. Today's unbalanced system puts too much control in the hands of technical experts, moving antitrust enforcement too far away from its democratic roots.49

In that article, we began the conversation of what an expert, but democratic, form of competition would mean for the main institutional players in our field, namely:

1) the legislatures that enact and oversee the law;

2) the public agencies that investigate and enforce the law;

3) the executive branches that execute the competition laws as

part of a broader array of responsibilities;

4) private litigants and sub-federal enforcement agencies;

5) the judiciary, which decides trials and appeals of both public and private antitrust litigation; and

6) civil society. 0

This article expands that framework with a more in depth analysis of the institutions of competition law from the perspective of how these different institutions support or push back against democratic values. Two caveats before proceeding further. First, while most of the specific examples are drawn from the experience of the United States, and to a lesser extent the EU and its member states, the overarching principles remain applicable to analyzing whether any given jurisdiction's competition law system exhibits a greater or lesser democracy deficit. Second, while my co-author and I both believe that the promotion of democracy should be an express value of competition law, this portion of the article is agnostic to that debate. Whether one believes that democracy, wealth transfer, consumer choice, efficiency, or something else should be the sole goal, the primary goal, one goal among many, or a minor aspect of competition policy, there is a still a pressing need that the resulting law and policy are enforced in a democratic manner that ensures due process, non-discrimination, and transparency.

#### One instance spills over. The plan creates slippery slope for power shifts to democratically unaccountable institutions.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Perhaps Congress simply does not care about, or actually approves of, the continued evolution of United States antitrust law and policy in all its complexity. However, this silence or indifference has important consequences. It shifts power from the most democratic elected institutions to the more distant, less democratic institutions of agencies and courts to craft fundamental economic policy free from all but the most macro-level interventions or corrections. No legislature can spend all of its time on competition policy. But when it does, one should ask:

Is the legislature addressing fundamental issues or minor matters at the fringe?

Is the legislature addressing matters of national importance or local concern of a small group of members?

Has the legislature proposed or explored actual improvements or is it primarily airing issues for which no action is likely to ensue?

How is the legislature ensuring that power is delegated subject to democratic controls and that the other institutional actors are acting in accordance with democratic norms?

If major changes have occurred elsewhere in the system, had Congress actually approved or merely not paid attention?

What non-mandatory hearings occur, how were they selected, and why do they matter?

Without such inquiries, power naturally migrates from the more democratic institutions to the less democratic portions of the system. If legislatures approve of the course of current competition law and policy, they should say so. If they do not approve, then their silence should not be used to justify self-interested actors shifting power in their favor, while the legislature chooses to turn its attention to other pressing issues and only nibble at the edges of competition policy.

#### The counterplan’s sunset is key to sunshine test legislation. Immediate fiat without public hearing crushes signal of participatory democracy in antitrust.

Steve Delbianco, The Hill, 1-11-2022, "Klobuchar needs to put her antitrust legislation to the sunshine test," TheHill, https://thehill.com/blogs/congress-blog/technology/589293-klobuchar-needs-to-put-her-antitrust-legislation-to-the

Winter is coming for America’s tech industry. Sen. Amy Klobuchar (D-Minn.) is marshaling forces to push antitrust legislation that would put Washington bureaucrats in charge of innovation and business decisions that have made Apple, Amazon, Google, and Microsoft so popular here and around the world. And as with the winter weather here in the capital, the best antidote is sunshine — in the form of an open hearing to air very real concerns about how Klobuchar’s bills would hurt consumers and undermine America’s competitive standing in the world. That kind of sunshine was absent last June when similar antitrust bills were marked-up in a closed House Judiciary Committee meeting that went all night long, without any input or testimony. But that’s the point of going straight to a closed markup — it lets the sponsors avoid a public hearing that puts sunshine on the proposed legislation. Still, that messy markup session tainted those antitrust bills to the point where Speaker Nancy Pelosi (D-Calif.) has held them back from the House calendar so far. But those bills could break loose if the Senate rams related legislation through, again without a hearing. What would we learn at an open hearing on Klobuchar’s antitrust bills, with testimony from economists and internet security and privacy experts? First, her American Innovation and Choice Online Act would prohibit innovation that has given American consumers so many choices online. In her own words, Klobuchar’s bill would “Prevent self-preferencing and discriminatory conduct.” That bars Amazon from showing its generic products as alternatives to products from big name brands. Amazon’s 150 million Prime customers would no longer see a Prime badge signaling next-day shipping, since that would “discriminate” against sellers who don’t have their products shipped from Amazon distribution centers. A hearing on Klobuchar’s bill would also reveal that Google search results may no longer default to showing a Google map and reviews if search results include a nearby destination. Klobuchar says that would be illegal for “biasing search results in favor of the dominant firm.” Perhaps most worrying for bill sponsors is that internet security experts would describe consequences when Klobuchar’s law stops a dominant platform from “preventing another business’s product or service from interoperating.” Apple could be penalized for blocking an app from its App Store, even when Apple believes there are risks of security or privacy breaches, whether from the app provider or from hackers who exploit access granted to the app. At a hearing, we’d learn that the bill’s mandated “interoperability” is precisely how a university researcher allowed Cambridge Analytica to steal the private data of millions of Facebook users. A hearing would give Americans the chance to hear Klobuchar explain how her bill could constrain politically driven prosecution by FTC and DoJ officials demanding that a company do more to stop global warming or to advance economic and social justice for their workers. If we’re lucky, the Senate hearing could also address Klobuchar’s second antitrust bill, the Platform Competition and Opportunity Act. That bill would bar the largest American companies from acquiring related businesses, putting the brakes on growth and innovation at Amazon, Apple and Google. The highlight of the hearing would be Klobuchar explaining why her bill would lock-in those few companies as the enforcement targets, while carving-out Walmart and her home-state retailer Target – even if they later grew beyond the size threshold in the law. Finally, an open Senate hearing puts sunshine on what will alarm Americans whose retirement savings are invested in Apple, Amazon, Google, Meta, and Microsoft. Those companies lead the world in R&D investment and innovation, yet would be prosecuted by a subjective and destructive antitrust regime untethered to traditional standards of consumer welfare. That would reduce America’s technological standing in the world, at a time when other nations are helping their own champions compete with us. Unfortunately, Senate leadership may bow to Klobuchar’s pressure to bypass hearings and move straight to a closed markup in a committee she chairs. All major legislation, particularly when it impacts America's world-leading tech industry, needs to pass the Sunshine Test – a fully open process of probing questions and debate. If there’s no Senate hearing, the concerning consequences discussed above would only be revealed when enforcement of the law begins. And that’s when winter really comes for American consumers.

#### Preventing the plan from happening key to democratic legitimacy. The plan appears as a closed door, backroom dealing because it is immediate and lacks meaningful opportunity for public participation.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Lastly, Warren cites Sunshine and Sunset legislation as allowing Congress to exercise control over administrative agencies. 87 Sunshine laws "allow the sun to shine" on meetings where important public policy decisions are being made.8 8 Preventing these meetings from happening behind closed doors can make administrative decision making more democratically accountable.8 9 Sunset laws require agency evaluation at set intervals in order to ascertain whether their financial support should be continued.90 This review allows legislators to scrutinize agencies at regular intervals to determine whether the agencies are performing satisfactorily, need to implement changes, or be terminated.9 1

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#### That means the CP PICs out of the plan’s expansion of “scope” of “antitrust laws.”

Spencer Weber Waller, John Paul Stevens Chair in Competition Law, Loyola University Chicago School of Law, ’20, “The Omega Man or the Isolation of U.S. Antitrust Law,” https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1682&context=facpubs

The United States defines the antitrust laws as the substantive provisions of the Sherman, Clayton, and Federal Trade Commission acts along with a small number of subsidiary statutes. This limits the scope of antitrust law to agreements between competitors, monopolization law, and the review of potentially harmful mergers and acquisitions. In contrast, the EU and other jurisdictions have led the world to a broader understanding of the meaning and reach of competition law that is only partially understood or appreciated in the United States.245 This Section explores that broader vision of competition including market studies and investigations; prohibitions against public anticompetitive conduct; state aids; and the use of public interest factors normally not part of the U.S. vision of the antitrust enterprise.

#### Resolved means certain and durable. The counterplan is not durable because the congress could prevent the plan from happening in the counterplan.

Random House Unabridged 6 (http://dictionary.reference.com/search?q=resolved&r=66)

re·solved Audio Help /rɪˈzɒlvd/ Pronunciation Key - Show Spelled Pronunciation[ri-zolvd] –adjective firm in purpose or intent; determined.

#### Should means immediate and certain – the counterplan has the congress review the plan later and lets them decide whether the plan should happen.

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

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

#### Substantial means certain.

Words and Phrases ‘64 (40 W&P 759)

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

#### The CP is functionally distinct – sunsetted legislation is substantively different than legislation than permanent legislation.

JOHN E. FINN, Professor of Government, Wesleyan University. PhD. Princeton University, ’10, “Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation” 48 Colum. J. Transnat'l L. 442 2009-2010

In sum, the benefits of sunset clauses as elements of statutory design generally fall into three categories-deliberative, informational and distributive. This suggests strongly we should expect to see sunset clauses in policy environments dominated by informational uncertainty, risk (both social and electoral) and typified by a high potential for political conflict regarding the allocation of power. In addition, because sunset clauses "allocate transaction costs differently than permanent legislation," 29 we should expect sunsetted legislation to be substantively different than legislation that would otherwise result. This is because "legislators perceive (accurately or not) temporary legislation differently. ' 30

#### CP Pics out of USFG – only uses congress. “The” implies all parts

Merriam-Webster's Online Collegiate Dictionary, 5

http://www.m-w.com/cgi-bin/dictionary

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

#### USFG is all the three branches

USLegal 9(definitions.uslegal.com/u/united-states-federal-government, September 23 2009, DA 6/21/11,)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people

#### Prohibitions must have no exceptions. The counterplan excludes the instance where the congress votes to retain it.

Justice White, ’87, California v. Cabazon Band of Mission Indians, 480 US 202 - Supreme Court 1987

Following its earlier decision in Barona Group of Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy, 694 F. 2d 1185 (1982), cert. denied, 461 U. S. 929 (1983), which also involved the applicability of § 326.5 of the California Penal Code to Indian reservations, the Court of Appeals rejected this submission. 783 F. 2d, at 901-903. In Barona, applying what it thought to be the civil/criminal dichotomy drawn in Bryan v. Itasca County, the Court of Appeals drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy. Inquiring into the nature of § 326.5, the Court of Appeals held that it was regulatory rather than prohibitory.[8] This was the analysis employed, with similar results, 210\*210 by the Court of Appeals for the Fifth Circuit in Seminole Tribe of Florida v. Butterworth, 658 F. 2d 310 (1981), cert. denied, 455 U. S. 1020 (1982), which the Ninth Circuit found persuasive.[9]

We are persuaded that the prohibitory/regulatory distinction is consistent with Bryan's construction of Pub. L. 280. It is not a bright-line rule, however; and as the Ninth Circuit itself observed, an argument of some weight may be made that the bingo statute is prohibitory rather than regulatory. But in the present case, the court reexamined the state law and reaffirmed its holding in Barona, and we are reluctant to disagree with that court's view of the nature and intent of the state law at issue here.

There is surely a fair basis for its conclusion. California does not prohibit all forms of gambling. California itself operates a state lottery, Cal. Govt. Code Ann. § 8880 et seq. (West Supp. 1987), and daily encourages its citizens to participate in this state-run gambling. California also permits parimutuel horse-race betting. Cal. Bus. & Prof. Code Ann. §§ 19400-19667 (West 1964 and Supp. 1987). Although certain enumerated gambling games are prohibited under Cal. Penal Code Ann. § 330 (West Supp. 1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact. Brief for 211\*211 Appellees 47-48. Also, as the Court of Appeals noted, bingo is legally sponsored by many different organizations and is widely played in California. There is no effort to forbid the playing of bingo by any member of the public over the age of 18. Indeed, the permitted bingo games must be open to the general public. Nor is there any limit on the number of games which eligible organizations may operate, the receipts which they may obtain from the games, the number of games which a participant may play, or the amount of money which a participant may spend, either per game or in total. In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.[10]

### Lio good

#### LIO integrates countries which preserves stability

Mearsheimer ’19 (John J. Mearsheimer is the R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago. “Bound to Fail The Rise and Fall of the Liberal International Order”, International Security Volume 43 | Issue 4 | Spring 2019, p.7-50, <https://www.mitpressjournals.org/doi/pdf/10.1162/isec_a_00342>) [HS]

This liberal approach to NATO expansion is reflected in how the Clinton administration sold that policy to the U.S. and West European publics. For example, Deputy Secretary of State Strobe Talbott argued in 1995 that embedding the countries of Eastern Europe in NATO—as well as the European Union— was the key to producing stability in that potentially volatile region. “Enlargement of NATO,” Talbott argued, “would be a force for the rule of law both within Europe’s new democracies and among them.” Moreover, it would “promote and consolidate democratic and free market values,” which would further contribute to peace.31 The United States based its policy toward China in the post–Cold War period on the same liberal logic. For example, Secretary of State Albright maintained that the key to sustaining peaceful relations with a rising China is to engage with it, not try to contain it the way the United States had sought to do with the Soviet Union during the Cold War. Engagement, Albright claimed, would lead to China’s active membership in some of the world’s major institutions and help integrate it into the U.S.-led economic order, which would inevitably help turn China into a liberal democracy. China would then be a “responsible stakeholder” in the international system, highly motivated to maintain peaceful relations with other countries.32

#### Empirically the LIO promotes peace and development globally

Mearsheimer ’19 (John J. Mearsheimer is the R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago. “Bound to Fail The Rise and Fall of the Liberal International Order”, International Security Volume 43 | Issue 4 | Spring 2019, p.7-50, <https://www.mitpressjournals.org/doi/pdf/10.1162/isec_a_00342>) [HS]

The Golden Years, 1990–2004 Efforts by the United States and its allies to integrate China and Russia into the order’s key economic institutions after the Cold War ended were generally successful. Russia joined the IMF and the World Bank in 1992, although it did not join the World Trade Organization (WTO) until 2012. China had been a member of the IMF and the World Bank since 1980, when it took Taiwan’s place in those institutions. China joined the WTO in 2001. Despite a minor crisis over Taiwan in 1997, Beijing and Washington were otherwise on good terms throughout the 1990s and early 2000s. Engagement appeared to be working. Relations between Moscow and Washington also fared well during this period. The story in Europe was also positive. The 1992 Maastricht Treaty was a major step in promoting European integration, and in 1999 the euro made its debut, which was widely seen as evidence that the EU had a bright future. Furthermore, the early waves of EU and NATO expansion into Eastern Europe occurred with few problems, although Russian policymakers made their opposition clear. Finally, both Czechoslovakia and the Soviet Union broke apart peacefully. Yugoslavia did not, however, resulting in wars over Bosnia and Kosovo, which the United States and its NATO allies were slow to respond to and bring to an end. But a cold peace was eventually imposed on the Balkans by 1999. Developments in the Greater Middle East were more mixed, but even there it appeared that the region was slowly but steadily being incorporated into the liberal international order. Israel and the Palestine Liberation Organization signed the Oslo Accords in September 1993, giving hope that the two sides might find a peaceful solution to their conflict by the end of the decade. The United States, operating with a UN Security Council mandate, led a broad coalition of allies to a stunning military victory over Iraq in early 1991— liberating Kuwait, significantly weakening Iraq’s military, and exposing Saddam Hussein’s secret nuclear weapons program, which was then shut down. Nevertheless, the Baathist regime maintained power. Afghanistan also remained a trouble spot, mainly because the Taliban allowed al-Qaida to plan its operations there, including the September 11 terrorist attacks, without interference. The events of that day, however, prompted the United States to invade Afghanistan in October 2001 and topple the Taliban, putting in its place a pro-Western regime. Then, in March 2003, the U.S. military conquered Iraq and removed Saddam from power. It appeared by the summer of 2003 that the Bush Doctrine, which aimed to spread democracy across the Greater Middle East, was going to work as intended.

## Naval

### 2nc – alt causes

#### Alt causes to naval readiness

DOUGHERTY 21 --- CHRISTOPHER DOUGHERTY, senior fellow in the defense program at the Center for a New American Security, “GRADUALLY AND THEN SUDDENLY: EXPLAINING THE NAVY’S STRATEGIC BANKRUPTCY”, JUNE 30, 2021. https://warontherocks.com/2021/06/gradually-and-then-suddenly-explaining-the-navys-strategic-bankruptcy/

The U.S. Navy is on the verge of strategic bankruptcy. Its fleet isn’t large enough to meet global day-to-day demands for naval forces. Due to repeated deployments and maintenance backlogs, the fleet also isn’t ready enough to meet these demands safely, nor can it quickly surge in an emergency. Finally, the fleet isn’t capable enough to meet the challenges posed by China’s increasingly modern and aggressive People’s Liberation Army Navy. How did this happen to a force that, as recently as two decades ago, dominated the world’s oceans to a degree perhaps unequalled in human history? The answer is gradually and then suddenly.

Myriad authors have responded to the Biden administration’s Fiscal Year 2022 defense budget request with a mix of confusion and consternation. Critics have directed their ire, in particular, at the budget’s treatment of the Navy, given the administration’s purported focus on China as a strategic competitor. However, the issues noted by critics aren’t limited to this budget, but reflect a persistent trend since at least the FY2019 request, which was the first defense budget request to prioritize China as a strategic competitor. Despite the need for “urgent change at significant scale” to meet the Chinese military challenge, the last four budget requests have offered only measured change at moderate scale.

Why is that?

The stock response is usually a mix of bureaucratic inertia, service parochialism, and congressional obstruction. Inertia and parochialism are powerful forces, but hardly insurmountable ones, especially when facing a clear and pressing challenge. While Congress certainly determines the final shape of the authorized and appropriated budget, it has less influence on the executive branch’s initial budget request. Moreover, the bureaucracy, the services, and key components of Congress all generally agree on the core precepts of the 2018 National Defense Strategy. Specifically, they recognize that China is the most pressing military challenge facing the United States; the U.S. military response should focus on deterring Chinese aggression against U.S. allies, partners, and vital interests in the Indo-Pacific region; deterring China rests on a credible ability to defeat its aggression or deny China its objectives; and that this form of deterrence will require new methods of fighting wars backed by modernized air and naval forces.

The real impediments to urgent change are a lack of consensus on the risks posed by China, a lack of a shared vision for the future of the fleet, and limited options for implementing a new vision. Even if the Pentagon and Congress could reach consensus on these questions, the U.S. military lacks mature defense programs and the industrial capacity to build them at scale. These gaps aren’t unique to the Navy, but it serves as a useful example for the rest of the Defense Department because its gaps are so glaring in the context of the current strategic environment.

Lack of Consensus

While the U.S. defense community mostly agrees that China is the “pacing challenge” for the Department of Defense, there is much less consensus on what kind of threat China poses, or when the risk of conflict will be most acute. Some analysts believe that China poses an immediate threat. This position usually, but not always, correlates with a belief that competition below the threshold of war — like seizing unoccupied features in the South China Sea — represents a greater concern than the possibility of conventional war, such as over Taiwan. Others are more concerned with America’s medium-term vulnerability due to China’s rapid military modernization and the increasing age of the U.S. Navy fleet. This perspective tends to correspond with a belief that conventional war in five to 10 years is the most pressing risk. Still others are most worried that Chinese investments in AI and quantum computing could allow it to “leapfrog” the United States in the long-term military-technical competition, thereby establishing itself as the world’s foremost military power.

Lack of a Shared Vision

Any strategist’s view of what the Navy should look like will be shaped by how that strategist assesses the challenges posed by China and the distribution of risk across time. Someone focused on near-term day-to-day competition will tend to prioritize a large, highly ready fleet to maintain naval forces in key waters like the South China Sea. Someone concerned about the risk of conventional war in the next five to 10 years would sacrifice some near-term readiness and capacity to build a force capable of winning a future conflict with China. A defense planner or strategist who prioritized the long-term military-technical competition would eschew near-term investments in order to go all-in on next-generation systems with game-changing technologies that maintain the Navy’s technological advantage over the People’s Liberation Army Navy.

Further complicating this picture is the way that these risk assessments and future visions tend to correlate with different groups within the defense community. Traditional Navy advocates tend to fall into the “near-term group,” as it aligns most closely with their strategic vision of the Navy as a force that sustains the global order and ensures peace through forward presence. In this view, the fundamental purpose of the Navy is to be “haze gray and underway,” showing the flag across the world’s oceans. Persistently maintaining this overt forward presence demands large numbers of highly visible surface vessels like frigates and destroyers. Pentagon force planners, programmers, and analysts tend to worry about conflict in the medium term because that coincides with the five-year Future Years Defense Program, and conflict scenarios are a critical benchmark for the ability of the force to execute the defense strategy. From their perspective, a bigger fleet isn’t helpful if it lacks the capability to intervene directly in a war with China because it’s too heavily weighted toward surface vessels that are vulnerable to China’s arsenal of long-range missiles. Meanwhile, the research and development community, technologists, and horizon-scanning organizations like the Office of Net Assessment typically fret about the long-term military-technical competition. From their perspective, the traditional navalists and force planners are dangerously shortsighted. Every outdated, non-upgradeable piece of equipment acquired today or in the near future could become a white elephant that the department can’t divest quickly enough when AI and other technologies transform warfare.

The competition between these visions plays out yearly with each program review and budget submission and is partly responsible for a raft of recent studies and white papers on the future of the fleet. In these debates, near-term navalists advocate for increased readiness spending and acquiring more small surface combatants to reach the Navy’s goal of 355 ships and increase its ability to meet the demands of the geographic combatant commands. Mid-term force planners push for platform upgrades, additional munitions, more submarines and undersea systems, and longer-range carrier aircraft. Long-term technologists argue for greater research and development spending and investments in leap-ahead unmanned and autonomous systems to create a radical new fleet architecture comprising large numbers of unmanned and autonomous systems. The result of this competition between perspectives is usually an unsatisfying compromise that creates a fleet that’s not big enough for navalists, not capable enough for joint force planners, and not farsighted enough for the futurists.

Some believe that the 2020 future naval force study represents a shared vision for the future fleet. Developed cooperatively by the Navy and the Office of the Secretary of Defense — particularly the Office of Cost Assessment and Program Evaluation — this document presents a 30-year shipbuilding plan with purportedly realistic cost estimates. There are reasons for skepticism, however. First, this plan was developed under the last administration, and it’s likely that the new team is closely reviewing its assumptions and analysis, especially regarding the budget and costs. Second, the Navy has released countless “realistic” 30-year shipbuilding plans over the last 30 years, and none of them has ever come close to fruition.

Finally, the study doesn’t clearly articulate a vision of the future Navy, but instead lays out an overstuffed buffet of future forces with something for everyone. Navalists see a return to the glory years of Secretary John Lehman, the 600-ship Navy, and the 1980s maritime strategy. The force planners get excited about the huge growth in undersea systems and the Combat Logistics Force — both of which would be critical in any conflict with China — and are sanguine about the possibility of a more distributed and resilient fleet architecture. The futurists look at the huge investments in unmanned systems and have hope that the Navy has finally “gotten religion” about the disruptive potential of advanced technologies. The problem is that the Navy will never build all of these ships because the plan rests on overly optimistic budget assumptions and would require 30 years in which no major event intervenes to shift U.S. defense spending priorities. Determining what gets cut when the budget axe inevitably falls depends a lot on the initial assumptions about risk and the overarching vision of the future Navy.

Lack of Options

The Navy’s FY2022 request suggests that the Biden administration will pursue a mix of the medium-term and long-term approaches, given its emphasis on advanced munitions and research and development alongside cuts to the legacy surface combatant fleet. These proposed ship cuts, combined with the lack of replacements in the budget, are yet another shoal barring the Navy’s path to a fleet of more than 300 ships. It is the failure to address this persistent shortfall that has truly aggravated the Navy community. Blake Herzinger summed up this position perfectly in War on the Rocks, writing that “The Biden administration’s Fiscal Year 2022 defense budget was an opportunity to arrest the Navy’s decline and recapitalize the fleet to address this uncertain future. Instead, its authors elected to perpetuate a status quo that would see the fleet continue to wither, while the competition surges ahead.”

The problem with this line of reasoning is that there are few credible short-term options to recapitalize the fleet. The Navy has been trying to retire its aging Ticonderoga cruisers for years without a proper replacement in the works since the cancellation of the next-generation cruiser (CG-X) program. The proposed retirement of four littoral combat ships in the 2022 budget request seems to indicate that the Navy may have belatedly recognized that it is unsuited to the demands of competition and conflict with China. And yet the Constellation class frigate isn’t ready to swap out for littoral combat ships and won’t be a one-for-one replacement given its higher cost.

The lack of options becomes painfully acute if one ascribes to the mid- or long-term perspectives of the China threat. Further upgrades to the Arleigh Burke destroyers and Virginia submarines that comprise the backbone of today’s fleet will require new clean-sheet designs that are at least a decade away or more. Unmanned surface vessels offer a way to increase the Navy’s capacity within reasonable budget constraints, but current ships are immature, as are the concepts and analysis needed to integrate them into the fleet. They simply aren’t a viable near-term option to backfill proposed cuts to the surface fleet. The Navy has become like a sports team filled with aging superstars. It knows change is needed, but its choices are limited to proven systems with long-term limitations, or immature systems with significant technical and conceptual risks.

Even in areas where mature designs exist, like the Burkes, Virginias, and Constellations, there isn’t enough capacity at the shipyards to enable a rapid fleet recapitalization or sustain a larger fleet. This reflects a longstanding trend to consolidate and rationalize the defense industrial base in search of efficiency. The downside is a lack of slack capacity and the flexibility it enables. To his credit, Herzinger notes this limitation in his article, and other navalists such as Jerry Hendrix have frequently decried the state of the U.S. shipbuilding. Still, the reality is that aggressive fleet recapitalization isn’t possible without major up-front investments in industry that would require additional time and money. From industry’s perspective, these investments require predictability — there’s no sense in building new facilities and hiring and training thousands of workers without an unambiguous long-term demand signal from the Pentagon and Capitol Hill. Such predictability is impossible without a common perception of risk and a shared vision of the future fleet.

As though all of these hurdles weren’t enough, the Navy’s shipbuilding budget is hamstrung by the need to recapitalize the nuclear ballistic missile submarine (Columbia-class) fleet and the decision to purchase a “block” of two Ford-class aircraft carriers. For nearly a decade, Navy budget observers have sounded the alarm that the Columbia would punch a huge hole in the Navy’s budget when it shifted from development to procurement. The block buy of the Fords saved the Navy money but arguably exacerbated this problem by committing so much of the Navy’s shipbuilding budget up-front.

The Heart of the Matter

A series of decisions (and indecisions) decades in the making have backed the Navy into a budget and force-planning corner. Even if the Navy were to receive a larger share of the defense budget — which Herzinger and others suggest — there simply is no way to build a bigger fleet quickly, and any attempt to do so might burden the Navy with ships of limited utility in the long-term strategic competition with China. While perhaps unsatisfying, the Navy’s 2022 budget request is a product of these constraints. It prioritizes the ballistic missile submarines, munitions, auxiliary ships, and mature combatant designs, and divests older or less-capable ships. At the same time, the budget attempts to rebuild readiness (again) and invest in research and development to accelerate next-generation capabilities like unmanned surface and undersea vessels. It doesn’t rapidly grow the fleet for the same reasons that no budget request has rapidly grown the fleet in decades: There is no widespread agreement on why the fleet should grow; or how it should grow; and the underlying ideas, designs, and infrastructure needed for rapid growth have all withered.

The problems facing the Navy weren’t created in a single budget, and they won’t be fixed in a single budget. To get the Navy out of its force-planning doldrums, the next National Defense Strategy should clarify its assessment of the China challenge and serve as a forcing function to create a shared vision of the future Navy. The 2018 defense strategy tried to prioritize modernizing the Navy to deter future war with China over building near-term fleet capacity to supply ships to service geographic combatant command requests for forward forces. This prioritization got lost in implementation, as “Dynamic Force Employment” became shorthand for running the Navy ragged with repeated deployments, often to tertiary theaters like U.S. Central Command.

A clear assessment of the China challenge and a shared vision for the future fleet would help improve the gap between strategy and implementation that plagued the 2018 strategy. Perhaps more importantly, it would enable Navy and department leadership to work with, rather than against, Congress to undertake a long-term program to rebuild the Navy and reinvigorate the maritime industrial base on which the Navy and the nation depend.

Achieving consensus on this won’t be easy, as there are good reasons why China observers vary in their assessments of the risk of conflict and why U.S. naval and defense strategists differ on their visions of the future fleet. However, without this consensus and a concerted effort to reverse decades of drift, the Navy will continue its gradual slide toward strategic bankruptcy, and the risk of its debts coming due suddenly (and perhaps violently) will increase.

#### The navy is weak without just the maritime – they’re only a tiny chink in a half broken piece of armor. Recent reports show that we’re spread to thing to carry the proper demand. Differing of opinions and consensus within the navy is crushing effective planning – we’re half assing 20 things. China’s also been developing far more into AI and emerging tech, and may possibly leapfrog us in recent years. A couple cargo ships can’t solve this – that’s Doughtery.