## 1AC NDT

#### The United States federal government should increase prohibitions on anticompetitive private sector collective bargaining business practices in the United States.

### Economy---1AC

#### Advantage 1 is the Economy.

#### Labor cartels collapse the economy:

#### 1. Consumers---increases prices and stifles economic recovery.

Jesse Newman 21. Reporter, The Wall Street Journal. “Unions Push Companies as Workers Stay Scarce” Wall Street Journal. 10-17-21. https://www.wsj.com/articles/from-film-sets-to-manufacturing-plants-unions-push-companies-as-workers-stay-scarce-11634488473

**Union leaders are pressing to increase their ranks** and **secure gains for their members** as workers **demand more from their employers** and companies struggle with labor shortages and **snarled supply chains.**

A walkout by production workers for farm and construction machinery company Deere DE -1.19% & Co. that began Thursday followed recent stoppages at snack producer Mondelez International Inc., commercial truck maker Volvo and breakfast-cereal giant Kellogg Co. Labor leaders elsewhere this year have worked to unionize Starbucks Corp. SBUX 0.24% baristas and Amazon.com Inc. AMZN 2.45% warehouse workers, so far with mixed success.

Union officials said workers are motivated by lingering frustration over their hours, pay and concerns for their health as some have held front-line jobs through the Covid-19 pandemic. Employees this year have pushed for higher wages, expanded benefits, safer workplaces and added staffing.

“There is a **new militancy out there**,” said James P. Hoffa, president of the International Brotherhood of Teamsters labor union, which represents 1.4 million workers, from Detroit auto workers to package-delivery drivers. “I do think it’s an opportunity for labor.”

Many **companies in recent months**, responding to the tight labor market for lower-wage workers, have been raising pay, offering signing bonuses and improving benefits to stay competitive. Critics of unions have warned that the work stoppages and efforts to influence labor policy could **push up prices for consumers** and slow production, potentially **stifling the U.S. economic recovery.**

“Businesses and unions should be working together to get the economy **back on track**,” said Kristen Swearingen, chairwoman of the Coalition for a Democratic Workplace, an organization of industry groups including the U.S. Chamber of Commerce. **Work stoppages could wind up** **costing jobs and hurting small businesses**, the coalition said.

Earlier this month on the company’s earnings call, the chief executive officer of food giant Conagra Brands Inc. was asked by analysts about concerns over strikes.

“It’s a tight labor market, and it takes a lot of ingenuity and creativity and effort to attract and retain employees,” Sean Connolly, the CEO, responded, adding, “So we’re, obviously, always trying to cultivate the strongest possible relationships with our employees…And I feel good about where we sit right

Low-wage work is in high demand, and employers are now competing for applicants, offering incentives ranging from sign-on bonuses to free food. But with many still unemployed, are these offers working? Photo: Bloomberg

Marcel Debruge, a labor-relations attorney for companies, said companies are dealing with heightened frustration among employees. But he feels many companies are increasing efforts to be responsive and that employees might not turn to unions partly because workers now have other avenues, such as social media, to express grievances and secure gains. “I don’t believe a new day has dawned in organized labor,” he said.

Union membership, particularly in the private sector, has been in a decadeslong decline. **Job growth has slowed** in industries such as manufacturing, transportation and utilities, which are typically more unionized compared with healthcare and other services. Some manufacturers have placed new plants in Southern states where unions typically are less common.

#### That outweighs.

George Reisman 14. Ph.D. Pepperdine University Professor Emeritus of Economics and the author of Capitalism: A Treatise on Economics “How Labor Unions Hurt Workers” 09-07-14. Mises Institute. <https://mises.org/library/how-labor-unions-hurt-workers>

Many Americans, perhaps a substantial majority, still believe that, irrespective of any problems they may have caused, labor unions are fundamentally an institution that exists in the vital self-interest of wage earners. Indeed, many believe that it is labor unions that stand between the average wage earner and a life of subsistence wages, exhausting hours of work, and horrific working conditions.

Labor unions and the general public almost totally ignore the essential role played by falling prices in achieving rising real wages. They see only the rise in money wages as worthy of consideration. Indeed, in our environment of chronic inflation, prices that actually do fall are relatively rare.

Nevertheless, the only **thing that can explain a rise in real wages** throughout the economic system is a **fall in prices relative to wages**. And the only thing that achieves this is an **increase in production per worker**. More production per worker — a higher productivity of labor — serves to **increase the supply of goods and services** produced relative to the supply of labor that produces them. In this way, it reduces prices relative to wages and thereby raises real wages and the general standard of living.

What raises money wages throughout the economic system is not what is responsible for the rise in real wages.

Increases in money wages are essentially the result just of the increase in the quantity of money and resulting increase in the overall volume of spending in the economic system. In the absence of a rising productivity of labor, the increase in money and spending would **operate to raise prices by as much or more than it raised wages.** This outcome is prevented only by the fact that at the same time that the quantity of money and volume of spending are increasing, the output per worker is also increasing, with the result that prices rise by less than wages. A fall in prices is still present in the form of prices being lower than they would have been had only an increase in the quantity of money and volume of spending been operative.

With relatively minor exceptions, real wages throughout the economic system **simply do not rise from the side of higher money wages.** Essentially, they rise only from the side of a greater supply of goods and services relative to the supply of labor and thus from prices being lower relative to wages. The truth is that the means by which the standard of living of the individual wage earner and the individual businessman and capitalist is increased, and the means by which that of the average wage earner in the economic system is increased, are very different. For the individual, it is the earning of more money. For the average wage earner in the economic system, it is the **payment of lower prices.**

What this discussion shows is that the increase in money wages **that labor unions seek is not at all the source of rising real wages** and that the source of rising real wages is in fact a rising productivity of labor, which always operates from the side of falling prices, not rising money wages.

Indeed, the efforts of labor unions to raise money wages are profoundly **opposed to the goal of raising real wages** and the standard of living. When the unions seek to raise the standard of living of their members by means of raising their money wages, their policy inevitably comes down to an attempt to make the labor of their members **artificially scarce**. That is their only means of raising the wages of their members. The unions do not have much actual power over the demand for labor. But they often achieve considerable power over the supply of labor. And their actual technique for raising wages is to **make the supply of labo**r, at least in the particular industry or occupation that a given union is concerned with, **as scarce as possible.**

Thus, whenever they can, unions attempt to gain control over entry into the labor market. They seek to impose apprenticeship programs, or to have licensing requirements imposed by the government. Such measures are for the purpose of holding down the supply of labor in the field and thereby enabling those fortunate enough to be admitted to it, to earn higher incomes. Even when the unions do not succeed in directly reducing the supply of labor, the imposition of their above-market wage demands still has the effect of **reducing the number of jobs offered** in the field and thus the supply of labor in the field that is able to find work.

The **artificial wage** increases imposed by the labor unions result in unemployment when above-market wages are **imposed throughout the economic system**. This situation exists when it is possible for unions to be formed easily. If, as in the present-day United States, all that is required is for a majority of workers in an establishment to decide that they wish to be represented by a union, then the wages imposed by the unions will be effective even in the nonunion fields.

**Employers in the nonunion fields** will feel **compelled** to offer their workers wages comparable to what the union workers are receiving — indeed, possibly even still higher wages — in order to **ensure that they do not unionize.**

Widespread wage increases **closing large numbers of workers out** of numerous occupations put extreme pressure on the wage rates of whatever areas of the economic system may still remain open. These limited areas could absorb the overflow of workers from other lines at low enough wage rates. But minimum-wage laws prevent wage rates in these remaining lines from going low enough to absorb these workers.

From the perspective of most of those lucky enough to keep their jobs, the most serious consequence of the unions is the holding down or **outright reduction of the productivity of labor.** With few exceptions, the labor unions openly combat the rise in the productivity of labor. They do so virtually as a matter of principle. They oppose the introduction of labor-saving machinery on the grounds that it causes unemployment. They **oppose competition among workers.** As Henry Hazlitt pointed out, they force employers to tolerate featherbedding practices, such as the classic requirement that firemen, whose function was to shovel coal on steam locomotives, be retained on diesel locomotives. They impose make-work schemes, such as requiring that pipe delivered to construction sites with screw thread already on it, have its ends cut off and new screw thread cut on the site. They impose narrow work classifications, and require that specialists be employed at a day’s pay to perform work that others could easily do — for example, requiring the employment of a plasterer to repair the incidental damage done to a wall by an electrician, which the electrician himself could easily repair.

#### 2. Unemployment---unions reduce the number of available jobs.

Morgan O. Reynolds 18. A former chief economist at the U.S. Department of Labor and a professor emeritus of economics at Texas A&M University. “Labor Unions.” Econlib. June 27, 2018. <https://www.econlib.org/library/Enc/LaborUnions.html>

Although labor unions have been celebrated in folk songs and stories as fearless champions of the downtrodden working man, this is not how economists see them. Economists who study unions—including some who are avowedly prounion—analyze them as **cartels that raise wages above competitive levels by restricting the supply of labor** to various firms and industries.

Many unions have won higher wages and better working conditions for their members. In doing so, however, they have **reduced** **the number of jobs available** in unionized companies. That second effect occurs because of the basic law of demand: if unions successfully raise the price of labor, employers will purchase less of it. Thus, **unions are a major anticompetitive force in labor markets.** Their **gains come at the expense of consumers, nonunion workers, the jobless, taxpayers, and owners** of corporations.

According to Harvard economists Richard Freeman and James Medoff, who look favorably on unions, “Most, if not all, unions have monopoly power, which they can use to raise wages above competitive levels” (1984, p. 6). Unions’ power to fix high prices for their members’ labor **rests on** **legal privileges and immunities** that they get from government, both by statute and by nonenforcement of other laws. The purpose of these legal privileges is to restrict others from working for lower wages. As antiunion economist Ludwig von Mises wrote in 1922, “The long and short of trade union rights is in fact the right to proceed against the strikebreaker with primitive violence.” Interestingly, those who are expected to enforce the laws evenhandedly, the police, are themselves heavily unionized.

U.S. unions enjoy many legal privileges. Unions are immune from taxation and from **antitrust laws.** Companies are **legally compelled** to bargain with unions in “good faith.” This innocent-sounding term is interpreted by the National Labor Relations Board to suppress such practices as Boulwarism, named for a former General Electric personnel director. To shorten the collective bargaining process, Lemuel Boulware communicated the “reasonableness” of GE’s wage offer directly to employees, shareholders, and the public. Unions also can force companies to make their property available for union use.

Once the government ratifies a union’s position as representing a group of workers, it represents them exclusively, whether or not particular employees want collective representation. In 2002, unions represented about 1.7 million waged and salaried employees who were not union members. Also, union officials can **force compulsory union dues** from employees—members and nonmembers alike—as a condition for keeping their jobs. Unions often use these funds for political purposes—political campaigns and voter registration, for example—unrelated to collective bargaining or to employee grievances, despite the illegality of this under federal law. Unions are relatively immune from payment of tort damages for injuries inflicted in labor disputes, from federal court injunctions, and **from many state laws under the “federal preemption” doctrine.** Nobel laureate Friedrich A. Hayek summed it up as follows: “We have now reached a state where [unions] have become uniquely privileged institutions to which the general rules of law do not apply” (1960, p. 267).

Labor unions **cannot prosper** in a competitive environment. Like other successful cartels, they depend on government patronage and protection. Worker cartels grew in surges during the two world wars and the Great Depression of the 1930s. Federal laws—the Railway Act of 1926 (amended in 1934), the Davis-Bacon Act of 1931, the Norris-LaGuardia Act of 1932, the National Labor Relations Act of 1935, the Walsh-Healy Act of 1936, the Fair Labor Standards Act of 1938, various war labor boards, and the Kennedy administration’s encouragement of public-sector unionism in 1962—all added to unions’ monopoly power.

#### Even the perception that unions are exempt from antitrust law ensures collapse.

Mathieu Taschereau-Dumouchel 20. Cornell University. “The Union Threat” 03-16-20. <http://www.restud.com/wp-content/uploads/2020/05/MS20794manuscript.pdf>

As unions are now covering only about 7% of private sector jobs in the United States, many observers have argued that their impact on the aggregate economy must be small. In opposition to this view, this paper investigates how unions can nonetheless have a **sizable impact on the macroeconomy** through their **influence on nonunion firms.** Indeed, if unionization lowers profits, like **many studies** find, **vulnerable nonunion firms** might distort their behavior to **prevent their own unionization**. Through that channel, unions may **influence employment, wages and output** in many nonunion firms and, therefore, have a **larger impact on macroeconomic aggregates** than the unionization rate alone would suggest.

To analyze this mechanism, this paper proposes a novel general equilibrium theory of endogenous union formation in which each firm hires multiple workers who differ in their productivity. In the model, unionization is simply a way for the workers to force the firm into a different wage setting mechanism. If a simple majority of the workers vote in favor of unionization, a union is created and wages are bargained collectively between the firm and its employees. If, instead, the vote fails to gather enough support, the firm remains union-free and wages are bargained individually between each worker and the firm.

By changing how the surplus from production is split, unionization generates a conflict between the firm and its employees. Indeed, since collective bargaining allows the workers to extract a higher share of the surplus, creating a union increases the average wage and **lowers profits.** But unionization also creates a second conflict, this time between the workers themselves. As collective bargaining compresses the distribution of wages, high-productivity workers tend to vote against the creation of the union, while low-productivity workers tend to vote in its favor. To avoid unionization, the firm can therefore hire more high-skill workers and **fewer low-skill workers** to increase the employees’ opposition to the union and push the outcome of the vote in its favor.

This change in hiring in response to the threat of unionization is not motivated by production efficiency and leads to a higher marginal cost of production. As a consequence, threatened firms **hire fewer workers, produce less** and, because of decreasing returns to labor, pay higher wages. The threat also affects the variance of wages through the change in hiring. Since the firm over- hires high-productivity workers, their marginal product goes down as do their wages. The opposite happens to low-productivity workers, and nonunion firms therefore pay a narrower range of wages in response to the threat of unionization.

In the model, the labor market is subject to search frictions so that it takes time for workers to be matched with vacancies. The **unemployment rate is also affected by the union threat**. In general equilibrium, as threatened firms hire fewer workers, the **unemployment rate goes up** and it takes more time for workers to find jobs. Since unemployment becomes less attractive, firms are able to extract a higher share of the production surplus which **also pushes wages down.**

#### 3. Productivity---unions guarantee companies lose profits.

Richard A. Epstein 20. The Peter and Kirsten Bedford Senior Fellow at the Hoover Institution is the Laurence A. Tisch Professor of Law, New York University Law School, and a senior lecturer at the University of Chicago. “The Decline Of Unions Is Good New” Hoover Institute. 01-27-20. https://www.hoover.org/research/decline-unions-good-news

Unions are monopoly institutions that raise wages through collective bargaining, **not** productivity improvements. The ensuing **higher labor costs, higher costs of negotiating** collective bargaining agreements, and higher labor market uncertainty all **undercut the gains to union workers** just as they magnify losses to nonunion employers, as well as to the shareholders, suppliers, and customers of these unionized firms. They also **increase the risk of market disruption** from strikes, lockouts, or firm bankruptcies whenever unions or employers overplay their hands in negotiation. These net losses in capital values **reduce the pension fund values** of unionized and nonunionized workers alike.

Employers are right to oppose unionization by any means within the law, because any gains for union workers **come at the expense of everyone else**. Of course, the best way for employers to proceed would be to seek efficiency gains by encouraging employee input into workplace operations—firms are **quite willing to pay** for good suggestions that lower cost or raise output. But such direct communications between workers and management are blocked by Section 8(a)(2) the National Labor Relations Act (NLRA), which mandates strict separation between workers and firms. This lowers overall productivity and often prevents entry-level employees from rising through the ranks.

So what then could justify this inefficient provision? One common argument is that unions help reduce the level of income inequality by offering union members a high living wage, as seen in the golden age of the 1950s. But **that argument misfires on several fronts.** Those high union wages **could not survive** in the face of foreign competition or new nonunionized firms. The only way a union can provide gains for its members is to extract some fraction of the profits that firms enjoy when they hold monopoly positions.

#### Only productivity gains make the economy sustainable.

Richard A. Epstein 19. American law professor. “Combatting Union Monopoly Power” Cambridge Core. 11-01-2019. <https://www.cambridge.org/core/books/abs/cambridge-handbook-of-us-labor-law-for-the-twentyfirst-century/combatting-union-monopoly-power/FF547FCC295FD14AC90EB30CC70CA0F0>

To put the point bluntly: **reform proposals are doomed**. Unions are cartels and to remain stable they must do more than extract profits from management.

Footnote

62 They must also find ways to divide those profits in ways that allow all their members to benefit. And those **distributional requirements** drive the move to rigid job classifications and work rules that are a **constant source of union inefficiency**. The problems are compounded because one basic tenet of collective bargaining is that these rules can be changed only with the joint consent of both parties, or (under the NLRA) by the employer unilaterally after bargaining in impasse – a timely and expensive process in which unions can demand collateral concession to union members for any alteration in rules or categories. Employers therefore can be expected to resist unionization more fiercely than before, given the **increased costs attendant to its operation**. At the same time, more workers themselves will come to realize that in a world of **rapid turnover** their own upward prospects in a dynamic world of job changes may be better **advanced by honing their individual contacts** and skills rather than supporting union activities.

There is a vast difference between **wage increases driven by monopoly power and those driven by higher productivity.** The former demands are constantly **resisted by employers** who regard themselves as losers. Hence such **gains are precarious**, given such risks as relocation, decertification, and bankruptcy. **Productivity gains, on the other hand, are stable.** Employers pay workers more because employers earn more from productive labor. In competitive markets, they **do not fear strikes or disruption, but the loss of competent workers to rival businesses.** Hence the enormous increases in wages and productivity during the Lochner period. Ingenious proposals to end wage stagnation and income inequality by revitalizing unions will have, if successful, their usual unintended effect: **everyone will be made worse off.** Footnote

63 On the other hand, the ongoing enfeeblement of unions **bodes well for society**. One key lever in that program is undoing as much of the modern regulatory burden of the labor law as possible, as soon as political forces allow.

#### Productivity gains increase competitiveness.

James Sherk 19. Research Fellow, Labor Economics. “What Unions Do: How Labor Unions Affect Jobs and the Economy” The Heritage Foundation. 05-21-09. <https://www.heritage.org/jobs-and-labor/report/what-unions-do-how-labor-unions-affect-jobs-and-the-economy>

What do unions do? The AFL-CIO argues that unions offer a pathway to higher wages and prosperity for the middle class. Critics point to the collapse of many highly unionized domestic industries and argue that unions harm the economy. To whom should policymakers listen? What unions do has been studied extensively by economists, and a **broad survey of academic studies** shows that while unions can sometimes achieve benefits for their members, they **harm the overall economy.**

Unions function as labor cartels. A labor cartel restricts the number of workers in a company or industry to drive up the remaining workers' wages, just as the Organization of Petroleum Exporting Countries (OPEC) attempts to cut the supply of oil to raise its price. Companies pass on those higher wages to consumers **through higher prices**, and often they also **earn lower profits**. Economic research finds that unions benefit their members but **hurt consumers generally**, and especially workers who are **denied job opportunities.**

The average union member earns more than the average non-union worker. However, that does not mean that expanding union membership will raise wages: Few workers who join a union today get a pay raise. What explains these apparently contradictory findings? The economy has become more competitive over the past generation. Companies have less power to pass price increases on to consumers without going out of business. Consequently, unions do not negotiate higher wages for many newly organized workers. These days, unions win higher wages for employees only at companies with competitive advantages that allow them to pay higher wages, such as successful research and development (R&D) projects or capital investments.

Unions effectively tax these investments by negotiating higher wages for their members, thus **lowering profits**. Unionized companies respond to this union tax by **reducing** investment. **Less investment makes unionized companies less competitive.**

This, along with the fact that unions function as labor cartels that seek to reduce job opportunities, causes unionized companies to lose jobs. Economists consistently find that **unions decrease the number of jobs available in the economy.** The vast majority of manufacturing jobs lost over the past three decades have been among union members--non-union manufacturing employment has risen. **Research** also shows that widespread unionization **delays recovery from economic downturns.**

Some unions win higher wages for their members, though many do not. But with these higher wages, unions bring less investment, fewer jobs, higher prices, and smaller 401(k) plans for everyone else. On balance, labor cartels **harm the economy**, and enacting policies designed to force workers into unions will only prolong the recession.

#### Competitiveness solves global war---it’s the bedrock of national security and international standing.

Zoë Baird 20. CEO and President of the Markle Foundation. A.B. Phi Beta Kappa and a J.D. from the University of California, Berkeley. “Equitable Economic Recovery Is a National Security Imperative”. https://www.markle.org/sites/default/files/Chapter-13-Baird-Equitable-Economic-Recovery.pdf

Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the twothirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership.

Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape.

An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

#### Slow growth collapses the liberal order AND causes global hotspot escalation--extinction.

Michael Oppenheimer 21. Clinical Professor, Center for Global Affairs, New York University. Senior Consulting Fellow, Scenario Planning at the International Institute for Strategic Studies. Former Executive Vice President, The Futures Group. Member, Council on Foreign Relations. Member, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs. Member, The American Council on Germany, The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction. “The Turbulent Future of International Relations.”

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president.7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically proTrump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19

Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the preWorld War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war.

We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars.

In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

Multipolarity

We can define multipolarity as a wide distribution of power among multiple independent states. Exact equivalence of material power is not implied. What is required is the possession by several states of the capacity to coerce others to act in ways they would otherwise not, through kinetic or other means (economic sanctions, political manipulation, denial of access to essential resources, etc.). Such a distribution of power presents inherently graver challenges to peace and stability than do unipolar or bipolar power configurations,22 though of course none are safe or permanent. In brief, the greater the number of consequential actors, the greater the challenge of coordinating actions to avoid, manage, or de-escalate conflicts. Multipolarity also entails a greater potential for sudden changes in the balance of power, as one state may defect to another coalition or opt out, and as a result, the greater the degree of uncertainty experienced by all states, and the greater the plausibility of downside assumptions about the intentions and capabilities of one’s adversaries. This psychology, always present in international politics but particularly powerful in multipolarity, heightens the potential for escalation of minor conflicts, and of states launching preventive or preemptive wars. In multipolarity, states are always on edge, entertaining worst-case scenarios about actual and potential enemies, and acting on these fears—expanding their armies, introducing new weapon systems, altering doctrine to relax constraints on the use of force—in ways that reinforce the worst fears of others.

The risks inherent in multipolarity are heightened by the attendant weakening of global institutions. Even in a state-centric system, such institutions can facilitate communication and transparency, helping states to manage conflicts by reducing the potential for misperception and escalation toward war. But, as Waheguru Pal Singh Sidhu argues in his chapter on the United Nations, the influence of multilateral institutions as agent and actor is clearly in decline, a result of bottom-up populist/nationalist pressures experienced in many countries, as well as the coordination problems that increase in a system of multiple great powers. As conflict resolution institutions atrophy, great powers will find themselves in “security dilemmas”23 in which verification of a rival’s intentions is unavailable, and worst-case assumptions fill the gap created by uncertainty. And the supply of conflicts will expand as a result of growing nationalism and populism, which are premised on hostility, paranoia, and isolation, with governments seeking political legitimacy through external conflict, producing a siege mentality that deliberately cuts off communication with other states.

Finally, the transition from unipolarity (roughly 1989–2007) to multipolarity is unregulated and hazardous, as the existing superpower fears and resists challenges to its primacy from a rising power or powers, while the rising power entertains new ambitions as entitlements now within its reach. Such a “power transition” and its dangers were identified by Thucydides in explaining the Peloponnesian Wars,24 by Organski (the “rear-end collision”)25 during the Cold War, and recently repopularized and brought up to date by Graham Allison in predicting conflict between the US and China.26

A useful, and consequential illustration of the inherent challenge of conflict management during a power transition toward multipolarity, is the weakening of the arms control regime negotiated by the US and the Soviet Union during the Cold War. Despite the existential, global conflict between two nuclear armed superpowers embracing diametrically opposed world views and operating in economic isolation from each other, the two managed to avoid worst-case outcomes. They accomplished this in part by institutionalizing verifiable limits on testing and deployment of both strategic and intermediate-range nuclear missiles. Yet as diplomatically and technically challenging as these achievements were, the introduction of a third great power, China, into this twocountry calculus has proven to be a deal breaker. Unconstrained by these bilateral agreements, China has been free to build up its capability, and has taken full advantage in ramping up production and deployment of intermediate-range ground-launched cruise missiles, thus challenging the US ability to credibly guarantee the security of its allies in Asia, and greatly increasing the costs of maintaining its Asian regional hegemony. As a result, the Intermediate Nuclear Force treaty is effectively dead, and the New Start Treaty, covering strategic missiles, is due to expire next year, with no indication of any US–Russian consensus to extend it. The US has with logic indicated its interest in making these agreements trilateral; but China, with its growing power and ambition, has also logically rejected these overtures. Thus, all three great powers are entering a period of nuclear weapons competition unconstrained by the major Cold War arms control regimes. In a period of rapid advances in technology and worsening great power relations, the nuclear competition will be a defining characteristic of the next decade and beyond. This dynamic will also complicate nuclear nonproliferation efforts, as both the demand for nuclear weapons (a consequence of rising regional and global insecurity), and supply of nuclear materials and technology (a result of the weakening of the nonproliferation regime and deteriorating great power relations) will increase.

Will deterrence prevent war in a world of several nuclear weapons states, (the current nuclear powers plus South Korea, Iran, Saudi Arabia, Japan, Turkey), as it helped to do during the bipolar Cold War? Some neorealist observers view nuclear weapons proliferation as stabilizing, extending the balance of terror, and the imperative of restraint, to new nuclear weapons states with much to fight over (Saudi Arabia and Iran, for example).27 Others,28 examining issues of command and control of nuclear weapons deployment and use by newly acquiring states, asymmetries in doctrines, force structures, and capabilities between rivals, the perils of variable rates in transition to weapons deployment, problems of communication between states with deep mutual grievances, the heightened risk of transfer of such weapons to non-state actors, have grave doubts about the safety of a multipolar, nuclear-armed world.29 We can at least conclude that prudence dictates heightened efforts to slow the pace of proliferation, while realism requires that we face a proliferated future with eyes wide open.

The current distribution of power is not perfectly multipolar. The US still commands the world’s largest economy, and its military power is unrivaled by any state or combination of states. Its population is still growing, despite a recent decline in birth rates. It enjoys extraordinary geographic advantages over its rivals, who are distant and live in far worse neighborhoods. Its economy is less dependent on foreign markets or resources. Its political system has proven—up to now—to be resilient and adaptable. Its global alliance system greatly extends its capacity to defend itself and shape the world to its liking and is still intact, despite growing doubts about America’s reliability as a security guarantor. Based on these mostly material and historical criteria, continued American primacy would seem to be a good bet, if it chooses to use its power in this way.30

So why multipolarity? The clearest and most frequently cited evidence for a widening distribution of global power away from American unipolarity is the narrowing gap in GDP between the US and China. The IMF’s World Economic Outlook forecasts a $0.9 trillion increase in US GDP for 2019–2020, and a $1.3 trillion increase for China in the same period.31 Many who support the American primacy case argue that GDP is an imperfect measure of power, that Chinese GDP data is inflated, that its growth rates are in decline while Chinese debt is rapidly increasing, and that China does poorly on other factors that contribute to power—its low per capita GDP, its political succession challenges, its environmental crisis, its absence of any external alliance system. Yet GDP is a good place to start, as the single most useful measure and long-term predictor of power. It is from the overall economy that states extract and apply material power to leverage desired behavior from other states. It is true that robust future Chinese growth is not guaranteed, nor is its capacity to convert its wealth to power, which is a function of how well its political system works over time. But this is equally the case for the US, and considering recent political developments is not a given for either country.

As an alternative to measuring inputs—economic size, political legitimacy, technological innovation, population growth—in assessing relative power and the nature of global power distribution, we should consider outputs: what are states doing with their power? The input measures are useful, possibly predictive, but are usually deployed in the course of making a foreign policy argument, sometimes on behalf of a reassertion of American primacy, sometimes on behalf of retrenchment. As such, their objectivity (despite their generous deployment of “data”) is open to question. What is undeniable, to any clear-eyed observer, is a real decline in American influence in the world, and a rise in the influence of other powers, which predates the Trump administration but has accelerated into America’s free fall over the last four years. This has produced a de facto multipolarity, whether explainable in the various measures of power—actual and latent—or not. This decline results in part from policy mistakes: a reckless squandering of material power and legitimacy in Iraq, an overabundance of caution in Syria, and now pure impulsivity. But more fundamentally, it is a product of relative decline in American capacity—political and economic—to which American leadership is adjusting haphazardly, but in the direction of retrenchment/restraint. It is highly revealing that the last two American presidents, polar opposites in intellect, temperament and values, agreed on one fundamental point: the US is overextended, and needs to retrench. The fact that neither Obama nor Trump (up to this point in his presidency) believed they had the power at their disposal to do anything else, tells us far more about the future of American power and policy—and about the emerging shape of international relations—than the power measures and comparisons made by foreign policy advocates.

Observation of recent trends in US versus Russian relative influence prompts another question: do we understand the emerging characteristics of power? Rigorously measuring and comparing the wrong parameters will get us nowhere at best and mislead us into misguided policies at worst. How often have we heard, with puzzlement, that Putin punches far above his weight? Could it be that we misunderstand what constitutes “weight” in the contemporary and emerging world? Putin may be on a high wire, and bound to come crashing down; but the fact is that Russian influence, leveraging sophisticated communications/social media/influence operations, a strong military, an agile (Putin-dominated) decision process, and taking advantage of the egregious mistakes by the West, has been advancing for over a decade, shows no sign of slowing down, and has created additional opportunities for itself in the Middle East, Europe, Asia, Latin America, the Arctic. It has done this with an economy roughly the size of Italy’s. There are few signs of a domestic political challenge to Putin. His external opponents are in disarray, and Russia’s main adversary is politically disabled from confronting the problem. He has established Russia as the Middle East power broker. He has reached into the internal politics of his Western adversaries and influenced their leadership choices. He has invaded and absorbed the territory of neighboring states. His actions have produced deep divisions within NATO. Again, simple observation suggests multipolarity in fact, and a full explanation for this power shift awaiting future historians able to look with more objectivity at twenty-first-century elements of power.

When that history is written, surely it will emphasize the extraordinary polarization in American politics. Was multipolarity a case of others finding leverage in new sources of power, or the US underutilizing its own? The material measures suggest sufficient capacity for sustained American primacy, but with this latent capacity unavailable (as perceived, I believe correctly, by political leadership) by virtue of weakening institutions: two major parties in separate universes; a winnertake-all political mentality; deep polarization between the parties’ popular bases of support; divided government, with the Presidency and the Congress often in separate and antagonistic hands; diminishing trust in the permanent government, and in the knowledge it brings to important decisions, and deepening distrust between the intelligence community and policymakers; and, in Trump’s case, a chaotic policy process that lacks any strategic reference points, mis-communicates the Administration’s intentions, and has proven incapable of sustained, coherent diplomacy on behalf of any explicit and consistent set of policy goals.

Rising Nationalism/Populism/Authoritarianism

The evidence for these trends is clear. Freedom House, the go-to authority on the state of global democracy, just published its annual assessment for 2020, and recorded the fourteenth consecutive year of global democratic decline and advancing authoritarianism. This dramatic deterioration includes both a weakening in democratic practice within states still deemed on balance democratic, and a shift from weak democracies to authoritarianism in others. Commitment to democratic norms and practices—freedom of speech and of the press, independent judiciaries, protection of minority rights—is in decline. The decline is evident across the global system and encompasses all major powers, from India and China, to Europe, to the US. Right-wing populist parties have assumed power, or constitute a politically significant minority, in a lengthening list of democratic states, including both new (Hungary, Poland) and established (India, the US, the UK) democracies. Nationalism, frequently dismissed by liberal globalization advocates as a weak force when confronted by market democracies’ presumed inherent superiority, has experienced a resurgence in Russia, China, the Middle East, and at home. Given the breadth and depth of right-wing populism, the raw power that promotes it—mainly Russian and American—and the disarray of its liberal opponents, this factor will weigh heavily on the future.

The major factors contributing to right-wing populism and its global spread is the subject of much discussion.32 The most straightforward explanation is rising inequality and diminished intergenerational mobility, particularly in developed countries whose labor-intensive manufacturing has been hit hardest by the globalization of capital combined with the immobility of labor. Jobs, wages, economic security, a reasonable hope that one’s offspring has a shot at a better life than one’s own, the erosion of social capital within economically marginalized communities, government failure to provide a decent safety net and job retraining for those battered by globalization: all have contributed to a sense of desperation and raw anger in the hollowed-out communities of formerly prosperous industrial areas. The declining life expectancy numbers33 tell a story of immiseration: drug addition, suicide, poor health care, and gun violence. The political expression of such conditions of life should not be surprising. Simple, extremist “solutions” become irresistible. Sectarian, racial, regional divides are strengthened, and exclusive identities are sharpened. Political entrepreneurs offering to blow up the system blamed for such conditions become credible. Those who are perceived as having benefited from the corrupt system—long-standing institutions of government, foreign countries and populations, immigrants, minorities getting a “free ride,” elites—become targets of recrimination and violence. The simple solutions of course, don’t work, deepening the underlying crisis, but in the process politics is poisoned. If this sounds like the US, it should, but it also describes major European countries (the UK, France, Italy, Germany, Poland, Hungary, the Czech Republic), and could be an indication of things to come for non-Western democracies like India.

We have emphasized throughout this chapter the interaction of four structural forces in shaping the future, and this interaction is evident here as well. Is it merely coincidence that the period of democratic decline documented by Freedom House, coincides precisely with the global financial and economic crisis? Lower growth, increasing joblessness, wage stagnation, superimposed on longer-term widening of inequality and declining mobility, constitute a forbidding stress test for democratic systems, and many continue to fail. And if we are correct about secular stagnation, the stress will continue, and authoritarianism’s fourteen-year run will not be over for some time. The antidemocratic trend will gain additional impetus from the illiberal direction of globalization, with its growth suppressing protectionism, weaponization of global economic exchange, and weakening global economic institutions. Multipolarity also contributes, in several ways. The former hegemon and author of globalization’s liberal structure has lost its appetite, and arguably its capacity, for leadership, and indeed has become part of the problem, succumbing to and promoting the global right-wing populist surge. It is suffering an unprecedented decline in life expectancy, and recently a decline in the birth rate, signaling a degree of rot commonly associated with a collapsing Soviet Union. While American politics may once again cohere around its liberal values and interests, the time when American leadership had the self-confidence to shape the global system in its liberal image is gone. It may build coalitions of the like-minded to launch liberal projects, but there will be too much power outside these coalitions to permit liberal globalization of the sort imagined at the end of the Cold War. In multipolarity, the values around which global politics revolve will reflect the diversity of major powers, their interests, and the norms they embrace. Convergence of norms, practices, policies is out of the question. Global collective action, even in the face of global crises, will be a long shot. To expect anything else is fantasy

Unbrave New World and Future Challenges

At the outset of this chapter we described these structural forces as interacting to produce more conflict and diminished prosperity. We also predicted a world with shrinking collective capacity to address new challenges as they arise. What specifically will such a world look like? We address below three principal challenges to global problem solving over the next decade.

Interstate Conflict

In the world experienced by most readers of this volume, conflict is observed within weak states, sometimes promoted by regional competitors, by terrorist groups, or by great powers, acting through surrogates or by indirect means. Sometimes, as in Syria, this conflict spills over to contiguous states and contributes to regional instability, and challenges other regions to respond effectively, a challenge that Europe has not met. Much of this will continue, but the global significance of such local conflicts will be greatly magnified by increasing great power conflict, which will feed—rather than manage or resolve—local instabilities and will in turn be exacerbated by them. Great powers will jockey for advantage, support their local partners, escalate preemptively. Conflicts initially confined to failing states or unstable regions will be redefined by great powers as global in scope and significance.

This tendency of states to view local conflicts in the context of a zero-sum, global struggle for power is familiar to students of the Cold War, but now with the additional challenges to collective action, expanded uncertainty and worst-case thinking associated with the power transition to multipolarity. We can easily observe increased conflict in US–China relations, as we will in US–Russia relations as future US administrations try to make up for ground lost during the Trump presidency, especially in the Middle East. We can observe it among powerful states with mutual historical grievances, now with a weakening presence of the hegemonic security guarantor and having to consider the renationalization of their defense: Japan-South Korea, Germany-France. We can observe it among historical rivals operating in rapidly changing security landscapes: India-China. We can observe it within the Middle East, as internal rivalries are appropriated by regional powers in a contest for regional dominance. We can observe it clearly in Syria, where the regime’s violent suppression of Arab Spring resistance led to all-out civil war, attracted outside support to proxy forces by aspiring regional hegemons Saudi Arabia and Iran, enabled the rise of ISIS, and eventually to great power intervention, principally by Russia. In a world of effective great power collaboration or American primacy, the Syrian civil war might have been settled through power sharing or partition, or if not, contained within Syria. The collapse of Yugoslavia, occurring during a period of US “unipolarity” and managed effectively, demonstrates the possibilities. Instead, with the US retrenching, Middle East rivals unconstrained by great powers, and great power competition rising, the Syria civil war was fed by outside powers, then metastasized into the region, and—in the form of refugee flows—into Europe, fundamentally altering European politics. Libya may be at the early stages of this scenario.

This is not the end of the Syria story. Russia has established itself as a major player in Syria and the Middle East’s power broker, the indispensable country with leverage throughout the region. China is poised to reap the financial and power benefits of Syrian reconstruction. The US has just demonstrated, in its act of war against the Iranian regime, its willingness, without consultation, to put its allies’ security in further jeopardy, accentuating the risks of security ties with Washington and generating added opportunities for Russia and China. The purpose here is not to critique US policy, but to point out the dramatically shifting power balance in a critical region, toward multipolarity. The dangers of such a shift will become apparent as some future US president attempts to reassert US influence in the region and finds a crowded playing field.

Can a multipolar distribution of power among several states whose interests, values, and political practices are divergent, all experiencing bottom-up nationalist pressures, all seeking advantages in the oversupply of regional instability, be made to work? I think not. Will this more dangerous world descend into direct military confrontation between great powers, and could such confrontation lead to use of nuclear weapons? Here the question becomes, what will this more dangerous world actually look like; what instruments of coercion will be available to states as technology change accelerates; how will states employ these instruments; how will deterrence work (if at all) among several states with large but unequal levels of destructive capacity, weak command, and control, disparate— or opaque—strategies and simmering rivalries; can conflict management work in a world of weak institutions? The collapse of the Cold War era nuclear arms control regime, the threat to the Non-Proliferation Treaty represented by the demise of the JCPOA, and multiple indications of an accelerating nuclear arms race among the three principle powers, augurs badly. Given the structural forces at play, and without predicting the worst, we are indeed entering perilous times.

Global Poverty and Inequality

Despite the challenges of volatility and disruptive change inherent in globalization, the world under American liberal leadership has managed a dramatic reduction of extreme poverty. According to World Bank estimates, in 2015, 10 percent of the world’s population lived on less than $1.90 a day, down from nearly 36 percent in 1990.34 In fact, as of September 2018, half the world is now middle class or wealthier.35 The uneven success of the UN Millennium Development Goals (MDGs) exemplifies this achievement, and demonstrates what is possible when open markets are managed through strong global institutions, effective leadership and interstate collaboration. What this liberal hegemonic system did not achieve, however, was a fair distribution of the gains from globalization within states, and among those states that for various reasons were not full participants in this system.

This record of partial achievement leaves us with a full agenda for the next fifteen years, but without the hegemonic leadership, strong institutions, ascendant liberalism or robust global growth that enabled previous gains. There are powerful reasons to question the sustainability of these poverty reduction gains, leading to doubts about the realization of the Sustainable Development Goals, which have replaced the MDGs as global development targets.36 (See Jens Rudbeck’s chapter and Sidhu’s UN chapter for SDGs). Skeptics have pointed to slowing global growth, specifically in China, whose demand for imported commodities was a major factor in developing country growth and job creation; growing protectionism in developed country markets, fueled by bottom-up forces of nationalism, and from top-down by a weakened global trading regime and increased geopolitical rivalry; the effects of accelerating climate change on agriculture, migration and communal conflict in poor countries; and the growth burst among poor countries from the rapid transition to more efficient use of resources, a transition that is now slowing down.37

Perhaps the greatest concern in this scenario is a general deterioration in the developing country foreign investment climate. Foreign direct investment (FDI) has been a major contributor to growth, job creation, and poverty alleviation among poor countries. It has incentivized growthfriendly policies, reduced corruption, introduced technology and effective management practices, and linked poor countries to foreign markets through global supply chains.38 It has stimulated growth of indigenous manufacturing and service companies to supply new foreign investments.

It has been the major cause of economic convergence between rich and poor countries. From 2000 to 2009, developing economies’ growth rates were more than four percentage points higher than those of rich countries, pushing their share of global output from just over a third to nearly half.39 However, FDI flows into poor countries are imperiled by the structural forces discussed here. Political instability arising from slower growth and environmental stress will increase investors’ perception of higher risk, reinforcing their developed country bias. Protectionism among developed countries will threaten the global market access upon which manufacturing investment in developing countries is premised, causing firms to pare back their global supply chains. As companies retrench from direct investment in poor countries, the appeal to those countries of Chinese debt financed infrastructure projects, under the Belt-Road Initiative with little or no conditionality, but at the risk of “debt traps,” will increase.

Global Warming

The question posed at the beginning of this section is whether the international system, evolving toward multipolarity and rising nationalism, will find the collective political capital to confront challenges as they arise. Global warming is the mother of all challenges, and the weakness in the system’s capacity to respond is clear. With the two major political/economic powers and greenhouse gas emitters locked in deepening geopolitical conflict (and with one of them locked in climate change denial, possibly through 2024), the chances of significantly slowing global warming or even ameliorating its effects are very slim. We are reduced to the default option, nation-specific adaptation to climate change, which will impose rising human, political and economic costs on all, and will widen the gap between rich countries with adaptive capacity (of varying degrees), and the poor, who will suffer deteriorating economic, political, and social conditions. (For a contrary, optimistic view see Michael Shank’s chapter, which credits new actors—like cities—as playing a more constructive role in climate mitigation.) This would bring to a close liberal globalization’s greatest achievement; the raising of 1.1 billion people out of extreme poverty since 1990,40 with all its associated gains in quality of life (in the WHO Africa region, for example, life expectancy rose by 10.3 years between 2000 and 2016, driven mainly by improvements in child survival and expanded access to antiretrovirals for treatment of HIV).41

Several forces are at work here. The problem itself is graver—in magnitude and in rate of worsening—than predicted by climate scientists. The UN Intergovernmental Panel on Climate Change (IPCC), the major source of information on global warming, has consistently underpredicted the rate of climate deterioration. This holds true even for its “worst-case scenarios,” meaning that what was meant as a wake-up call has in fact reinforced complacency.42 (see Michael Shank’s chapter for further discussion of climate change). The IPCC, in its 2019 report, has tried to undo the damage by emphasizing the acceleration in the rate of warming and its effects, the only partially understood dynamic of climate change, and—given wide uncertainty—the possibility of unpleasant surprises yet to come. This strengthens the scientific case for urgency—to both severely limit greenhouse gas emissions, and to increase investment in ameliorating the effects.

Unfortunately, the crisis comes at a moment when the climate for collective action is ice cold. Geopolitical competition incentivizes states to out produce each other, regardless of the environmental effects. Multipolarity complicates collective action. Economic stagnation mandates job creation, making regulation politically toxic. Bottom-up nationalism/populism causes states to pursue “relative gains,” meaning that if the nation is seen as gaining in a no-holds-barred economic competition with others, the negative environmental effects can be tolerated. A post-Trump presidency would help, with the US rejoining the Paris Agreement, and lending its weight to tighter regulation, increased R and D, and stronger economic incentives to reduce carbon emissions. Keep in mind, however, that President Obama was fully behind such efforts, but in a deeply polarized America was unable to implement measures needed to fulfill the Paris obligations through legislation, and his executive orders to do this were swiftly overturned by Trump.

Conclusion

It may be tempting to hope that post-Trump, the US can regain its global leadership and exert its considerable power in a liberal direction, but with enough self-awareness of its relative decline to share responsibility with others. This was, I believe, the broad direction of the Obama strategy, evidenced by the JCPOA and the Trans-Pacific Partnership: liberal, collective solutions to global problems, as US dominance receded.

This would constitute an optimistic scenario, and it confronts two major problems: can US internal politics support it (can, for example, the country legislate controls on carbon, essential for the global credibility and durability of such commitments); and is the world ready to reengage with American leadership, given the damage to its reputation and the structural forces discussed in this chapter?

My educated guess is no, on both counts. The rot within is extensive, the concrete evidence clear in the economic inequality/immobility numbers, the life expectancy numbers, the deep political polarization, between the two major parties, between regions, between cities and rural areas. We are in fact a long way from fitness for global leadership, and the recognition of this by others will accelerate the decline of American influence. The rest of the world is well on its way toward adjusting to post-American hegemony, some by renationalizing their defense, or by cutting deals with adversaries, by building new alliances or by seizing new opportunities for influence in the vacuum left by American retrenchment. The evidence for this will accumulate. Observe the current and emerging Middle East, where all these post-hegemonic strategies are visible.

#### Decline overcomes traditional barriers to conflict.

Jomo Kwame Sundaram & Vladimir Popov 19. Former economics professor was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007. Former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin “Economic Crisis Can Trigger World War.” <http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/>.

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, there are growing concerns about the increased possibility of large-scale military conflict.

More worryingly, in the current political landscape, prolonged economic crisis, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could easily spin out of control and ‘morph’ into military conflict, and worse, world war.

Crisis responses limited

The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy.

The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to foment unrest, conflict, even war as it is blamed on the foreign.

International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition!

Liberalization’s discontents

Rising economic insecurity, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and increase social tensions and turmoil, especially among the growing precariat and others who feel vulnerable or threatened.

Thus, ethno-populist inspired chauvinistic nationalism may exacerbate tensions, leading to conflicts and tensions among countries, as in the 1930s. Opportunistic leaders have been blaming such misfortunes on outsiders and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization.

Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality.

To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries.

Insecurity, populism, conflict

Thomas Piketty has argued that a sudden increase in income inequality is often followed by a great crisis. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern.

Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could inadvertently catalyse future crises and conflicts.

Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse.

At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies.

Avoiding Thucydides’ iceberg

Thus, protracted economic distress, economic conflicts or another financial crisis could lead to military confrontation by the protagonists, even if unintended. Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers.

They patently ignored Thucydides’ warning, in chronicling the Peloponnesian wars over two millennia before, when the rise of Athens threatened the established dominance of Sparta!

Anticipating and addressing such possibilities may well serve to help avoid otherwise imminent disasters by undertaking pre-emptive collective action, as difficult as that may be.

#### The plan solves.

Richard A. Epstein 21. Laurence A. Tisch Professor of Law, The New York University School of Law; Research Fellow at the Law & Economics Center at Antonin Scalia Law School, George Mason University. “The Application of Antitrust Law to Labor Markets — Then and Now” New York University Journal of Law & Liberty. Vol. 15:2. November 2021.

The first order of business for anyone who **believes in competition in labor markets**—and not redistribution of wealth to workers—should be a **repeal of the many labor statutes** that protect market cartelization or segmentation that if not immunized by statute would **count as per se violations of the antitrust law.** It should therefore be incumbent on the writers who support antitrust reform to speak out against these various rules and call for their repeal unless they could supply some special efficiency justification for these practices, which are hard to come by.

Thus, to give but one example, it has often been said that unions facilitate communications between firms and their workers. But the claim ignores the fact that union members have **no right to speak directly with employers** unless the union approves of the exchange, such that this artificial barrier blocks much needed communication. There is of course often a need for collective communication between the firm and its workers. Historically, company unions—which did not have the power to strike—served that particular role, but their influence has been sharply diminished since the NLRA declared that working with a company union would constitute an unfair labor practice.126

These other factors of course do not have any effect on the analysis of various practices that explicitly seek to divide markets in ways contrary to the antitrust law. Defenders of using the antitrust law in labor markets start their exploration into this topic by noting several well-publicized actions to thwart this form of express market division by use of covenants not to compete. They note that over ten years ago the Justice Department was able to secure a major financial settlement for $415 million from several major tech companies like Google and Apple, which had agreed among themselves not to steal each other’s employees.127 Here, there is no doubt that the agreement looks to be in **restraint of trade**, which in turn invites a rule of reason analysis to see if there is some explanation for these restraints. In some cases, the protection of key trade secrets (with uncertain depreciation rates) might make the restriction justifiable, and if it does, we should expect that employees will receive some sort of wage premium or collateral benefit up front to offset those additional burdens. These adjustments are easy to postulate, likely to occur, and hard to prove. Nor should we expect employment contracts to be the only method employers use to protect these secrets. Self-help arrangements are also possible, so firms devise internal classifications for trade secrets and for the most valuable of these take steps to divide and limit access so as to reduce the risk of theft or leakage, such that the loss of one piece of a formula has less of a chance of revealing the entirety of the trade secret. But here again, it is hard to generalize. In many areas, even knowing a single piece of information could make it easier for outsiders to infer the overall structure of research or operations from some apparently random piece of information. That is certainly the way in which criminal and military interrogation works with hostile targets. But it is even easier to obtain relevant information from new receptive employees or other sources who have every reason to share information with the new employer, not to conceal it.

That leaves open the issue of **what happens** if many firms in a competitive market independently decide to adopt a similar set of restrictions on labor mobility. Given the analysis in Mitchel, it appears as though these restrictions should also be subject to a rule of reason analysis, with the balance tipped perhaps more in favor of the individual employer, as it is under current law.128 The situation is still **more complex** because it could easily be that cases of this sort raise (at least in part) a classic prisoner’s dilemma game. All firms would be better off if they could freely poach, especially since high turnover rates are very much a **part of the innovation world**—which incidentally counts as **evidence against the supposed immobility of labor** in a market characterized by new entry and frequent exit. At this point, a public law that imposes additional restraints on the ability of individual firms to impose these restrictions could easily make sense—at least if some allowance is made for certain key cases in which the trade secret issue looms large.129 What is critical to note in this case is the poaching cases give **no reason whatsoever to change the basic framework** that is used to govern activities in product markets.

#### The antitrust exemption for unions solves nothing---causes rent fights and markets are competitive.

Richard A. Epstein 20. The Peter and Kirsten Bedford Senior Fellow at the Hoover Institution is the Laurence A. Tisch Professor of Law, New York University Law School, and a senior lecturer at the University of Chicago. “American Workers Do Not Need Unions” 07-01-20. <https://lawliberty.org/forum/american-workers-do-not-need-unions/>

On this last point, the most contentious issue is whether to treat trade unions, who rely on collective refusal to deal as a way to achieve exclusive bargaining rights against a targeted employer, as **monopolies of labor under antitrust laws**. In the pre-New Deal period, the collective refusal to deal by trade unions was treated under the 1890 Sherman Act in the same way as a collective refusal to deal by firms, as held in the famous case of Loewe v. Lawlor (1908).That decision was sound as a matter of economic logic, but it did not last long in the face of the majoritarian politics of the progressive movement. The initial innovation in the Woodrow Wilson presidency was the passage of Section 6 of the 1914 Clayton Act, which conferred on labor unions (and agricultural cooperatives) **a blanket immunity from the antitrust laws.** Next came the passage of the National Labor Relations Act (NLRA) in 1935. That law did more than exempt labor unions from the antitrust laws; it also gave a powerful boost to union monopoly power through mandatory collective bargaining.

**The innovation is deeply problematic.** The simple bedrock assumption is that labor unions were—and remain—organized monopolies that **should not be given special dispensation** under the NLRA and similar forms of state statutes. In some instances, it is costly to attempt to break up monopoly institutions with a frontal assault and thus it is important to ensure that conditions of market entry are alive and well, so that the incumbents will be forced to shed their monopoly profits in order to retain their customer base. But the difficulties in determining how to regulate the exercise of monopoly power never justify government policies intended to prop up unions in the fashion undertaken by the NLRA, whose central tenet is that a majority of workers in some government-designated bargaining unit shall be able to appoint a particular union as its sole representative. It may, for political reasons, not be possible to undo the provision of the NLRA, but whether or not that is true, nothing should be done to strengthen the hands of unions, as would happen through the currently moribund Employee Free Choice Act.

That statute, if ever enacted, would allow a union to be designated as the exclusive bargaining agent solely on signed union authorization cards, without any union election, and impose a first union “contract” for two years on an unwilling employer by mandatory arbitration. Any coercive pro-union government intervention poses two risks to the full class of employees. The first is that collective bargaining works to the detriment of those workers who are necessarily excluded from employment by this arrangement—monopoly wages result in lower demand for labor. The second is that collective bargaining forces workers within the bargaining unit who would rather opt out of the union to choose between having to resign their positions or to accept union domination. It is a simple illusion to think that unionization could ever increase the welfare of all workers simultaneously, when it necessarily aggravates the conflicts of interest that exist among different groups of workers.

Monopoly’s Losers

A pro-union strategy is still more disastrous when its so-called “**incidental effects**” are taken into account. It is well-established in economic theory that the benefits to any monopolist do not come from increased productivity, but from its ability to **raise price above marginal cost**, such that some beneficial transactions that would have taken place in competitive markets are eliminated to preserve monopoly power. That simple insight means the gains to the labor union and its members come both at the **expense of excluded workers**, and from the squeeze put on **shareholders, suppliers, and customers**. Even if these were just dollar-for-dollar trade-offs, it is questionable as a social matter whether we should favor policies that redistribute wealth towards union members and **away from lower-income workers**. But there is no reason to dwell on these niceties, because the legislative scheme here is not zero-sum; it is negative sum. The union members gain less than other members of society lose, as in all **cases of monopoly**. And every one has to bear the high administrative costs to keep this system in place. Indeed, the situation is still worse because the union is not a unitary monopolist like a well-structured corporation, but a loose confederation of individuals who have typical conflicts among themselves. Unlike a corporation whose shareholders are in rough alignment, there are constant **struggles to divide the gains** from monopolization among different classes of workers. Thus, some select group may have craft skills that command greater wages than the bulk of the rank and file; and older workers are much more interested in funding pension plans than preserving jobs for younger workers. Union leaders therefore must engineer delicate internal transfers within their ranks to keep their winning coalition alive, so that the cartel-arrangement (like OPEC) that ensues operates like an inefficient monopolist, with still greater social losses.

What then is a possible justification for these social losses? One older rationale that seems to be making something of a comeback today is that the unions are needed to supply countervailing power to the superior economic strength of management in all labor negotiations. But the point is misguided in all particulars. First, many firms, even very large ones, **operate in competitive markets**, and thus there is no monopoly power to combat. The union thus injects an element of monopoly into an **otherwise competitive market**. Such a union might in certain particular cases—mining is the obvious example—be able to extract site-specific Ricardian rents—which are easiest to do because no mine has a credible alternative use. But that fight over rents only **diminishes social welfare**, which is why a contract with workers that prevents them from seeking to gain those rents—the “yellow dog contract” so-called—makes perfectly good economic sense. Second, even where the management side has some monopoly power, the creation of a counter-monopoly force **increases bargaining costs**, as well as the risk of strike or lock-out, closure or movement out of the jurisdiction, in the competition for rents, which in turn reduces social welfare.

It is precisely their need to have a reliable source of monopoly profits that make union political activities even more dangerous. Union power critically depends on the erection (usually with the cooperation of employers) of strong barriers to entry, often in the form of **tariff protections** against international competition, and land use restrictions against local competition. Hence, the flattening of international trade barriers, and the general increase in domestic competitiveness reduces the level of potential gains available from unionization, until (to the regret of unions everywhere) they fall below the administrative costs of keeping this union structure together. At this point, we should expect the decline in the union sector, which in the private sector has gone about 35 percent of the market in 1954 to around 6 percent today. That decline in membership is not a function of the change in basic labor law, which has remained roughly constant since the adoption in 1947 of the Taft-Hartley Act. It is a function of the simpler fact that unions do not make sense for their potential members.

### ROL---1AC

#### Advantage 2 is Rule of Law.

#### The union antitrust exemption is pure hypocrisy---collapses the rule of law.

Kevin Mooney 13. An investigative reporter with free market think tanks associated with the Franklin Center for Government and Public Integrity. “SPECIAL EXEMPTIONS: HOW UNIONS OPERATE ABOVE THE LAW” California Policy Center. 10-03-13. https://californiapolicycenter.org/special-exemptions-how-unions-operate-above-the-law/

**Hypocrisy on antitrust**

Some exemptions are critical to the **very existence** of labor unions. One such exemption is from laws that are intended to ban monopolies. The Sherman Antitrust Act of 1890 states that “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is hereby declared to be illegal.”

Yet the Clayton Antitrust Act in 1914 **exempts unions from anti-monopoly laws**. Labor bosses who forcibly drive out independent employee bargaining groups have had the ability to operate as monopolies with legal cover. The critical passage included in Section 6 of the Act declares that “the labor of a human being is not a commodity or article of commerce. Nothing in the antitrust laws shall be construed to forbid the existence and operation of labor ; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.”

Subsequent pieces of legislation, including the **Norris-LaGuardia Act** (1932) and the National Labor Relations Act (1935), promote and protect unions as combinations of workers in restraint of trade. As noted by labor economist Charles Baird:

“Antitrust law is a particularly **egregious example** of government hypocrisy **because Congress has exempted unions.** That is how the U.S. Supreme Court interprets the Clayton Act (1914) and the Norris-LaGuardia Act (1932). Moreover, Congress has gone further with the National Labor Relations Act (NLRA) , which promotes and protects unions as combinations of workers in restraint of trade.

Economists define a cartel as an agreement among sellers (or buyers) of a product or service to eliminate or restrict competition among its members. For example, if General Motors, DaimlerChrysler, and Ford attempt to fix prices and assign sales quotas, that organization would be a cartel and illegal under the Sherman Act. (Whether it should be is another story.)

Similarly, if the employees of General Motors, DaimlerChrysler, and Ford organize to fix wages (set a standard union rate) and set up job demarcations (specify who does what work) that organization would be a cartel. Using ordinary English, the worker cartel (union) would be a combination in restraint of trade, but it would not be illegal under the Sherman Act.

The Clayton and Norris-LaGuardia Acts give unions a **statutory exemption** regarding specific “anticompetitive” activities, including secondary boycotts, picketing, and strikes. Whenever unions undertake other activities that are not specifically exempted, but which are “anticompetitive,” they, too, are declared exempt simply because they must be in order to make the NLRA effective.”

Baird added that “**A basic principle of the rule of law** under the U.S. Constitution is **equal treatment** under the law. . . . There is not supposed to be one set of rules for some and a different, contradictory set of rules for others. But when it comes to antitrust, **courts routinely ignore the rule of law**. . . . Hypocrisy replaced the rule of law.”

Conclusion

These are just a few of the double-standards and legal advantages that make union bosses less accountable to the law. Unions’ status as “above the law” did not arise naturally, but as the **result of unions’ political power**. They are the result of deliberate public policy decisions—decisions that could be reversed. Rank-and-file union workers, especially those **in the private sector**, have a significant stake in reforming labor laws that now benefit a privileged few at the expense of those they claim to represent.

#### The exemption ignores essential Constitutional principles.

Charles W. Baird 00. Professor of economics emeritus at California State University at East Bay. He specializes in the law and economics of labor relations, a subject on which he has published several articles in refereed journals and numerous shorter pieces with FEE. He received his Ph.D. from the University of California, Berkeley in 1968. “Unions and Antitrust: Governmental Hypocrisy” Foundation for Economic Education. 02-01-2000. <https://fee.org/articles/unions-and-antitrust-governmental-hypocrisy/>

However, on top of its other failings, antitrust law is a particularly **egregious example** of government hypocrisy because **Congress has exempted unions**. That is how the U.S. Supreme Court interprets the Clayton Act (1914) and the Norris-LaGuardia Act (1932). Moreover, Congress has gone further with the National Labor Relations Act (NLRA), which promotes and protects unions as combinations of workers in restraint of trade.

Economists define a cartel as an agreement among sellers (or buyers) of a product or service to **eliminate or restrict competition among its members**. For example, if General Motors, DaimlerChrysler, and Ford attempt to fix prices and assign sales quotas, that organization would be a cartel and illegal under the Sherman Act. (Whether it should be is another story.)

Similarly, if the employees of General Motors, DaimlerChrysler, and Ford organize to fix wages (set a standard union rate) and set up job demarcations (specify who does what work) that organization would be a cartel. Using ordinary English, the worker cartel (union) would be a combination in restraint of trade, but it would not be illegal under the Sherman Act.

The Clayton and Norris-LaGuardia Acts give unions a statutory exemption regarding specific “anticompetitive” activities, including secondary boycotts, picketing, and strikes. Whenever unions undertake other activities that are not specifically exempted, but which are “anticompetitive,” they, too, are declared exempt simply because they must be in order to make the NLRA effective.

For example, in the Allen Bradley case (1945) the Court ruled that collusion between unions and employers that restricts competition in labor markets is exempt, but collusion is not exempt when it restricts competition in other markets. Yet restrictions on competition in labor markets necessarily affect other markets. Every collective bargaining contract is the result of joint action of an employer and a union to **fix wages and work rules** in a labor market, and this necessarily **affects the prices and availability** of the goods and services produced by that labor. The Court had to make this spurious distinction to avoid contradicting the NLRA.

**Ignoring Constitutional Principle**

A basic **principle of the rule of law** under the U.S. Constitution is equal treatment under the law. The statue of Justice wears a blindfold signifying that all courts, including the U.S. Supreme Court, should apply the same rules to all irrespective of their identities and circumstances. There is not supposed to be one set of rules for some and a different, contradictory set of rules for others. But when it comes to antitrust, courts routinely **ignore the rule of law.**

Consider Hunt v. Crumboch (1945). A union used its closed-shop contracts (which when forced on employers are anticompetitive) with shippers to drive a trucking firm out of business simply because the union leaders didn’t like the owners. All the shippers with whom the target firm might have done business had agreements with the union that they would use only unionized truckers. The target was willing to unionize, but the union refused to accept any of the target’s employees into the union or to supply the target with any unionized drivers. Simply put, out of pure malice, the union drove the target firm out of business through its legally privileged combinations in restraint of trade. These activities were declared legitimate because, and only because, they were **carried out by a labor union**. The Court conceded that “Had a group of petitioner’s business competitors conspired and combined to suppress petitioner’s business by refusing to sell goods and services to it, such a combination would have violated the Sherman Act.” **Hypocrisy replaced the rule of law.**

#### Antitrust rule of law is key to public trust.

Merrick B. Garland 21. US Attorney General. “Attorney General Merrick B. Garland Addresses the National Association of Attorneys General” Department of Justice. 12-07-21. https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-addresses-national-association-attorneys-general

No matter the industry and no matter the company, the Justice Department will vigorously enforce our **antitrust laws**. We will aggressively protect consumers, safeguard competition and work **to ensure economic fairness** and opportunity for all.

I doubt that the founders of this association could have imagined that one day many of us would join together to sue a digital platform called “Google;” or that I would be participating in today’s meeting on a digital device; or even that the record in an antitrust case would ever make a pile higher than seven feet. But I am certain that they would be proud of our continued cooperation and partnership over the past century. I look forward to continuing that work together.

Since I was sworn in as Attorney General in March, I have set out three co-equal priorities that should guide the Justice Department’s work: **upholding the rule of law**; protecting civil rights; and keeping our country safe.

We work to uphold the rule of law by adhering to the norms that have been a part of the DNA of the Justice Department since Edward Levi’s tenure as the first post-Watergate Attorney General.

Those norms include the principled exercise of discretion. They **include independence from improper influence** – we must follow the facts and the law, and that is all.

And they include treating like cases alike. There cannot be one rule for friends and another for foes; one rule for the powerful and another for the powerless; one rule for the rich and another for the poor; or different rules, depending upon one's race or ethnicity.

Adhering to those norms and **upholding the rule of law is how we safeguard the public trust** that is essential for both our department and our **democracy to succeed.**

#### Rule of law and trust are key to effective government and crisis response---the alternative is collapse and populism.

OECD 13. “Chapter 1 Trust in government, policy effectiveness and the governance agenda” in Government at a Glance 2013. https://www.oecd-ilibrary.org/docserver/gov\_glance-2013-6-en.pdf?expires=1641590233&id=id&accname=guest&checksum=438C5CFAB504D30AB8FF74975A07F918

Why does trust in government matter?

Trust in government has been identified as one of the most important foundations upon which the legitimacy and sustainability of political systems are built. Trust is essential for social cohesion and well-being as it affects governments’ ability to govern and enables them to act without having to resort to coercion. Consequently, it is an efficient means of lowering transaction costs in any social, economic and political relationship (Fukuyama, 1995). A high level of trust in government might increase the efficiency and effectiveness of government operations.

Core levels of trust in government are necessary for the fair and effective functioning of government institutions – such as adherence to the rule of law, or the delivery of basic public services and the provision of infrastructure. The rule of law and independent judiciary are particularly important as their proper functioning is a key driver of trust in government, as established in several studies (Knack and Zak, 2003; Johnston, Krahn and Harrison, 2006; Blind, 2007). As well-functioning government institutions matter for business investment decisions, trust in them is a necessary ingredient to spur economic growth (Dasgupta, 2009; Algan and Cuha, 2013).

Trust in government institutions at the same time influences individual behaviour in ways that could support desired policy outcomes. This may range from rather narrowly defined policies and programmes (such as participation in vaccination campaigns) to broader policy reforms (e.g. environmental regulation or pension reform). Trust is important because many public programmes create the opportunity for free riding and opportunistic behaviour. Trust could reduce the risk of such behaviour to the extent that people are prepared to sacrifice some immediate benefits if they have positive expectations of the longer-term outcome of public policies, either at a personal level (pensions) or by contributing to the common good (redistribution of income through taxation).

Trust in government may help governments to implement structural reforms with long term benefits. Many reforms involve sacrificing short-term satisfaction for longer-term gains and will require broader social and political consensus to be effective and sustainable. In a high-trust environment, such reforms may not only be properly enacted and implemented, but could be sustained long enough to bear their fruits. This extends the time frame for policy decisions. In a low-trust climate, citizen will prioritise immediate, appropriable and partial benefits, and will induce politicians to seek short-term and opportunistic gains through free-riding and populist attitudes (Gyorffy, 2013).

Trust in government could improve compliance with rules and regulations and reduce the cost of enforcement. Rules and regulations are never perfect or complete enough to eliminate abuse. Their effectiveness depends on the extent to which people see them as fair and legitimate enough to outweigh the benefits of non-compliance. This is particularly important for regulations where the gap between the cost of compliance and personal benefits is large and where control is more difficult. Taxation is an example of the first, while traffic regulations are an example of the second. Trust in the regulator can lead to higher voluntary compliance (Murphy, 2004).

Trust in government institutions could help to increase confidence in the economy by facilitating economic decisions, such as on investment and consumption that foster economic growth. Trust in institutions as well as interpersonal trust may reduce the perception of risks linked to decisions ranging from the consumption of durables to job mobility, worker hiring and investment. An increase in trust among people raises total factor productivity, therefore fosters economic progress (Dasgupta, 2009). This, in turn, supports economic growth and extends the planning horizon of economic agents, increasing economic dynamism.

Trust in government seems to be especially critical in crisis situations, such as natural disasters, economic crisis or political unrest which focuses attention on the core functions of public governance. The capacity of governments to manage crises and to implement successful exit strategies is often a condition for their survival and for their re-election. In the aftermath of major disasters, lack of trust may hamper emergency and recovery procedures causing great harm to society and damaging government’s capacity to act. Likewise, the current economic crisis may reveal dimensions of trust that were not evident in the gradual evolution of countries in the years that preceded it.

#### Key to sustainability---solves climate, disease, and poverty---alternative is extremism and war.

Jonathan Perry 21. Global Dialogue for Social Development Branch, Division for Inclusive Social Development, UN DESA. "Trust in public institutions: Trends and implications for economic security". No Publication. 7-20-2021. https://www.un.org/development/desa/dspd/2021/07/trust-public-institutions/

Why should we care about trust?

Trust is integral to the functioning of any society. Trust in each other, in our public institutions and in our leaders are all essential ingredients for social and economic progress, allowing people to cooperate with and express solidarity for one another. It allows public bodies to plan and execute policies and deliver services. Greater public trust has been found to improve compliance in regulations and tax collections, even respect for property rights. It also gives confidence to consumers and investors, crucial to creating jobs and the functioning of economies more broadly. Success in achieving each of the Sustainable Development Goals (SDGs)—from eliminating poverty (SDG1), to combatting climate change (SDG13), to building peaceful and inclusive societies (SDG16)—will depend on citizens’ and businesses’ trust in public institutions and in each other.

Governments have also drawn on public trust to effectively address every stage of the COVID-19 pandemic response—from containment, to mitigation, to vaccinations. Early evidence has found that higher levels of confidence in national public institutions is associated with lower national COVID-19 mortality rates. This is consistent with evidence from previous health crises—including SARS, H1N1 and Ebola—where high public trust was found to be a crucial determinant for successful responses. Governments will need to count on, or in cases where government responses were largely found to be ineffective, to regain public trust as they plan and implement an inclusive recovery.

However, there is growing concern about a crisis in public trust that is contributing to, among other things, support for extreme political views, increasing public discontent, protests and in some cases violent conflict. The UN Secretary-General recently warned of a “trust deficit” that threatens to undermine progress towards the SDGs.

#### Disease causes extinction---the risk is categorically underestimated.

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

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

#### Antitrust rule of law is key to democracy.

Andrew C. Finch 17. Acting Assistant Attorney General Antitrust Division. U.S. Department of Justice. “Antitrust Enforcement and the Rule of Law” DOJ. 09-12-17. <https://www.justice.gov/opa/speech/file/996151/download>

To conclude, let me summarize why the Antitrust Division is such an important institution. It is important because of what it means **both to the American economy and to American democracy.** Whereas the organizing principle of our economy is competition, **the organizing principle of our democracy is the rule of law.** The Antitrust Division’s enforcement mission challenges it to defend both principles in a changing world.

We meet this challenge by working from a stable baseline of **sound antitrust principles.** Economic analysis and the per se rule narrow the field of close questions and help us think about the answers in a consistent way across time. **Transparency gives businesses** and international enforcers insight into how we will conduct that analysis, apply those rules, and answer those questions. We look forward to continuing that work in the years and cases to come.

#### Democracies are comparatively more peaceful than alternatives.

Dan Reiter & Allan C. Stam 3/31/22. Samuel Candler Dobbs Professor of political science at Emory University. Professor of public policy and politics at the University of Virginia. “Why democracies win more wars than autocracies.” <https://www.washingtonpost.com/politics/2022/03/31/ukraine-democracies-war-putin-russian-losses/>.

Autocrats start risky wars Three historically consistent patterns have emerged in the war in Ukraine. First, autocracies are more likely than democracies to start risky wars they go on to lose. Dictators are more willing to initiate high-risk wars because they know they can crack down on political opposition and remain in power if the fight goes badly. Iraq, for instance, launched two disastrous invasions of Iran and Kuwait. Even so, Saddam Hussein crushed internal uprisings to stay in power. Democratic leaders often, but not always, avoid these kinds of military failures, fearing the domestic electoral backlash of wars gone wrong. This is why democracies tend to win their wars — and why they wage shorter wars with fewer casualties. Like past authoritarians in Russia and elsewhere, Russian President Vladimir Putin has positioned himself domestically. He has steadily consolidated his hold on power over two decades, neutering the Russian parliament and political opponents, and destroying Russia’s independent media. Putin is now using that unchecked power to crush minor outbreaks of opposition, even from 7-year-old children. By eradicating the last vestiges of free speech and press in Russia, Putin may have felt comfortable taking on the risk of invading Ukraine. Dictators have to keep their militaries in check Second, like most dictators, Putin probably has some concerns about being overthrown by his own military. Dictators guard against this potential threat by centralizing military command authority and reducing the ability of lower-level commanders to take the initiative in battle. These moves may reduce an army’s ability to seize power in a crisis — but also undercut the military’s ability to defeat foreign foes. In its wars against Israel, the Egyptian leadership consistently restrained military leaders to lower the risk of an internal coup — but this crippled Egyptian fighting ability. Conversely, Israel’s willingness to grant command authority to lower-level officers has proven highly effective. Putin’s army today demonstrates the calcification and rigidity of a dictatorship. He appears unwilling to delegate decision-making autonomy to lower-level commanders, reducing military effectiveness. One result is that many high-level Russian officers lead from the front lines, where they have been killed in large numbers. Russia’s lower-ranked officers are not prepared or formally authorized to fill that leadership void. The Russian military’s inflexibility may explain other areas of poor performance. These include Russia’s curious vulnerability to Ukraine’s slow but lethal tank-killing drones, and the decision to drive a 40-mile-long Russian tank column into Ukraine along main roads exposed to ambush. Ukrainian troops, in contrast, are demonstrating bravery under fire combined with individual initiative — and inflicting surprising damage on Russian forces and supply lines. Dictators tend to ignore the truth Third, dictators often surround themselves with yes-men and political cronies, who deceive or remain silent rather than tell the unvarnished truth. Those in the inner circle typically reassure the leader that their vaunted troops will sweep aside the weak and corrupt enemy. In 1939, for instance, Joseph Stalin found out the hard way that invading Finland in winter was asking for trouble. In contrast, democratic leaders are more likely to have the benefit of robust debate inside and outside government. In 1990, President George H.W. Bush heard the hard truth from General Colin Powell that victory over Iraq would require a massive effort. Powell got the military commitment he said was necessary and delivered the most lopsided military victory in modern history. What about Putin? Every indication is that the Russian president is isolated and getting poor information. His arch-loyal defense minister, Sergei Shoigu, tasked with modernizing the Russian military over the last decade, promised Putin rapid victory — then apparently disappeared from view for nearly two weeks. Putin’s generals and intelligence chief reportedly refused to tell him the truth before the war: that years of Russian military reform had not made substantial progress, instead producing a “Potemkin military.” Actual combat is an unfailing truth-teller. Russian forces have suffered remarkable casualties and appear unable to execute basic battle requirements, such as implementing vehicle maintenance and providing troops with food and warm clothing.

#### Democracy solves terrorism, war with revisionist states, famine, and poverty.

Garry Kasparov 17. Chairman of the Human Rights Foundation founded the Renew Democracy Initiative. “Democracy and Human Rights: The Case for U.S. Leadership”. U.S. Senate. http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you

# 2AC Round 8

## Economy Advantage

### Business Confidence---2AC

#### The AFF turns---labor cartels increase prices which wrecks recovery---that’s Newman. They reduce available jobs---that’s Reynolds AND reduce company profits---that’s Epstein.

#### Unions undermine business confidence.

Avery Hartmans 21. A senior reporter on Insider's business news team. “Amazon workers in Alabama have a few hours left to vote on whether to join a union. Here's how unions work and why many companies oppose labor organizers.” Business Insider. 03-29-21. https://www.businessinsider.com/union-definition-why-companies-amazon-oppose-labor-organizing-workers-rights-2021-3

Why do **businesses typically oppose unions**?

The business community has typically had a "**total allergy to unionization**," Wilma Liebman, who served on the National Labor Relations Board under Presidents Obama, Bush, and Clinton, told Insider last year.

Union critics warn that **companies could take an economic hit** if their employees unionize, **forcing those businesses to outsource jobs** or force layoffs.

Companies also don't want an outside organization interfering with their autonomy or their ability to act unilaterally, Liebman said, adding that **businesses are fearful that unions will "cost them** more than they can afford." Organizers often counter with the fact that a union is a group of the company's own employees, and therefore not the threat companies perceive them to be.

Businesses argue that a union may not have employees' best interests at heart, which has been Amazon's argument for opposing unionization in Alabama: Amazon workers would be represented by the Retail, Wholesale, and Department Store Union, a labor union that acts on behalf of thousands of workers worldwide.

#### Thumpers---their evidence is about existing antitrust law spurring fears.

#### High prices upend business investment.

John S. Tobey 21. Contributor. “Reactions To Rising Inflation Have Begun - **Investment Drama Ahead**” Forbes. 11-27-21. https://www.forbes.com/sites/johntobey/2021/11/27/reactions-to-rising-inflation-have-beguninvestment-drama-ahead/?sh=2a887a2b6bb7

**Inflation reality is biting**, and consumers are noticing. Such an environment has been absent for years, so it's time for investors to shift gears - and act.

Inflation uptrends are **unlike all other economic and market growth cycles**. The negative results produce **reactionary business**, financial, government and consumer behavior that fosters the uptrend.

Now that rising inflation is the topic of the day, anticipatory and reactionary actions already are visible:

Businesses get green light to raise prices -

"Inflation Helps Boost Profit Margins"

"Companies seize rare opportunity to increase prices and outrun their own rising costs."

The Wall Street Journal (November 15, page A-1)

"Shoppers Increase Spending, Despite Inflation"

"Retail sales rose by 1.7% in October as consumers bucked the pandemic, higher prices."

The Wall Street Journal (November 17, page A-1)

Financial management begins to make aggressive shifts -

"CalPERS To Borrow, Add Risk To Meet Targets" [Higher inflation means higher liabilities, requiring higher returns]

"The move by the $495 billion California Public Employees’ Retirement System reflects the dimming prospects for safe publicly traded investments by households and institutions alike and sets a tone for increased risk-taking by pension funds around the country."

The Wall Street Journal (November 16, page B-1)

Government seeks to exhibit active, consumer-friendly role -

"President Calls for Inquiry into Price of Gas"

"President Biden called on the Federal Trade Commission to investigate whether oil-and-gas companies are participating in illegal conduct aimed at keeping gasoline prices high, in the latest effort by the White House to respond to public concerns about costs for everything from fuel to groceries."

The Wall Street Journal (November 18, page A-1)

Federal Reserve attempts to find its way as "temporary" and "transitory" reassurances fail -

"Fed officials express resolve to address inflation risks"

"Federal Reserve officials in discussions earlier this month said the central bank 'would not hesitate' to take appropriate actions to address inflation pressures that posed risks to the economy."

Associated Press (November 25)

Analysts become outspoken about the inflation reality -

"The Fed Is Running Out of Excuses on Inflation"

"Every time the Federal Reserve comes up with an excuse for raging inflation and why it won’t last, the data knock it back down.

"Inflation **hasn’t turned out to be temporary** and has accelerated, reaching the highest in a single month since January 1990. It is high even when **measured against pre-pandemic prices**, so this isn’t merely catch-up for the deflation of last spring. It is **no longer merely** about a narrow set of Covid-disrupted supply chains, or demand for used cars and other popular items. Even the get-out-of-jail-free card of FAIT, the Fed’s year-old policy of flexible average inflation targeting, is wearing thin.

"The only explanation remaining is that inflation will still be transitory–not as temporary as hoped, but that it will go away on its own. Investors still buy the story, but the risk is rising that the Fed has to act much more aggressively."

James Mackintosh in The Wall Street Journal (November 15, page B-1)

The bottom line: **Wall Street is preparing for a dramatic investment shakeup**

Wall Street is scanning the horizon for signs of rising inflation hitting where it will hurt worst: Fixed income securities. Wall Streeters know that bond holders will suffer mightily when the bond "vigilantes" return to demand full return for risk..

#### The Rogerson evidence is not a link---it just describes the evolution of antitrust law and how it is enforced---makes no spill over argument.

#### Business confidence is a useless indicator of economic prosperity.

Cameron Bagrie 18. Managing Director and Chief Economist at Bagrie Economics. Independent and straight-talking economics. Formerly Chief Economist, ANZ, New Zealand. "Business confidence is a hopeless indicator. But that doesn't mean the economy isn't in trouble," Spinoff, https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/

Business confidence has fallen off a cliff. Economist Cameron Bagrie says it’s meaningless, but other bad indicators can’t be ignored. The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings. We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met. A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too. The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels. Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

### Competitiveness Impact---2AC

#### Competitiveness solves global war---YES, leadership is relevant---demonstrates the strength of the American system that secures national security and deters threats---that’s Baird.

### Econ Impact---2AC

#### Economic growth outweighs---YES, eroding financial resilience causes war---insecurity fosters nationalist pressures that go nuclear---that’s Sundaram and Popov. Independently, collapses the LIO---emboldens revisionist powers---that’s Oppenheimer.

## Rule of Law Advantage

### Trust Impact---2AC

#### Trust is a conflict filter---enables solutions to poverty and conflict---otherwise, extremism escalates---that’s Perry.

### AT: Defense

#### The AFF outweighs---unions are the largest, most egregious example of pure hypocrisy---our evidence is explicit---that’s Mooney and Baird. Trump and lack of trust are a product of decline in institutional faith. It’s not doomed---UQ for the AFF. Don’t have to win stops all power abuses---not an internal link---but responded to above.

### Disease Impact---2AC

#### Yes, disease causes extinction---traits exist in nature to create an existential pandemic---globalization facilitates fast transmission that quickly transitions to lethality---that’s Pamlin.

### Democracy Impact---2AC

#### Not resilient---at a breaking point as a result of collapsing ROL. Democracy solves great power wars---collapse ensures aggression that escalates---that’s Reiter. Solves terror, escalation, and famine---that’s Kasparov. Populism defense isn’t responsive.

### Terror Impact---2AC

#### Terror escalates---developing new capabilities---retaliation goes nuclear---that’s Bunn and Roth.

# OFF

## T Per Se

### Prohibitions (vs Per Se)---2AC

#### We meet---the AFF is a per se prohibition---plan text in a vacuum.

#### Prohibition includes per se and rule of reason.

Anu Bradford and Adam S. Chilton 18. Anu Bradford Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton. Assistant Professor of Law and Walter Mander Research Scholar.

Before discussing our data and the coding of the CLI, it is important to recognize that there are limitations to any index that attempts to quantify competition regulation. This is because it is difficult to produce a single metric that tells the comprehensive story of country’s competition regime. For example, if a specific type of conduct is prohibited, is it prohibited always (per se) or sometimes (rule of reason)? This seems like a relevant distinction to code, but it turns out to be difficult to capture systematically in many jurisdictions. For instance, Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) seems to regulate anticompetitive agreements under the rule of reason standard in the European Union, but, in practice, cartels are per se prohibited. This highlights the challenge of coding even just the law in books, let alone accounting for all the nuances of a country’s competition policies.20

#### Anticompetitive business practices include rule of reason.

Charlotte Wezi Mesikano-Malonda 16. Executive director. "Global Competition Review". No Publication. 7-22-2016. https://globalcompetitionreview.com/review/the-european-middle-eastern-and-african-antitrust-review/the-european-middle-eastern-and-african-antitrust-review-2017/article/malawi-competition-and-fair-trading-commission

Anticompetitive business practices are generally defined as the category of agreements, decisions and concerted practices that result in the prevention, restriction or distortion of either actual or potential competition. Abuse of dominance and market power is an example of anticompetitive business practices and hence falls within the purview of the CFTA.3 Anticompetitive business practices are either illegal per se or illegal by rule of reason. A conduct is illegal per se if, regardless of its objective and effect or any justifications of the conduct, there is a presumption of harm on competition.

#### Prefer it:

#### 1. Their interp causes unbeatable PICs---need to answer, “do the aff as rule of reason.” Distorts aff literature---no evidence assumes only per se prohibitions.

#### 2. No bright line---rule of reason is a prohibition---they function synonymously.

Light 19, Sarah E. Light Assistant Professor of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania., The Law of the Corporation as Environmental Law, 71 Stan. L. Rev. 137, 2019, Lexis/Nexis

While antitrust law can serve as an environmental mandate by prohibiting collusive behavior that keeps environmentally preferable goods from the market, there is also conflict between antitrust law's goals of promoting competition and environmental law's goals of promoting [\*177] conservation. 192 Because antitrust law's per se rule and rule of reason operate on a somewhat fluid continuum, 193 this Subpart discusses the two doctrines together. The per se rule operates as a prohibition, whereas the rule of reason operates as both a prohibition and a disincentive. As noted above, antitrust law generally prohibits certain types of market activity - price fixing, horizontal boycotts, and output limitations - as illegal per se, and harm to competition is presumed. 194 For example, if an industry association declines to award a seal of approval necessary for a product's sale without any good faith attempt to test the product's performance, but rather simply because that product is manufactured by a competitor, such an action would be illegal per se. 195 Under this Article's framework, a per se violation is thus a prohibition. The more fact-intensive inquiry under the rule of reason tests "whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." 196 While this extremely broad statement might suggest that any fact is relevant to the inquiry, the salient facts under the rule of reason are "those that tend to establish whether a restraint increases or decreases output, or decreases or increases prices." 197 If an anticompetitive effect is found, then the action is illegal and the rule of reason operates, like the per se rule, as a prohibition. 198 The rule of reason can also operate as a disincentive, even if no [\*178] court finds an anticompetitive effect, as uncertainty and litigation risk may discourage firms from undertaking legally permissible, environmentally positive industry collaborations. 199 Associations of firms have adopted numerous mechanisms of private environmental governance to address the management of common pool resources like fisheries, forests, and the global climate. 200 Examples include the Sustainable Apparel Coalition's Higg Index 201 and the American Chemistry Council's Responsible Care program. 202 But private industry standards raise special antitrust concerns. An agreement among competitors with respect to product or process specifications may exclude competitors who fail to meet such standards, raising the specter that such industry collaborations really constitute output limitations or efforts to limit competition. 203 While the U.S. Supreme Court has scrutinized private standard-setting associations carefully, 204 it has noted that if associations "promulgate … standards based on the merits of objective expert judgments and through procedures that prevent the standard-setting process from being biased by members with economic interests in stifling product competition … , those private standards can have significant procompetitive advantages." 205 In the absence of price fixing or a boycott, a rule of reason analysis generally applies to product standard setting by private associations. 206 The uncertain outcome [\*179] inherent in the application of antitrust law in this context could therefore serve as a potential disincentive to the adoption of private industry standards. 207 The challenge of course is that some form of explicit sanctions on noncompliant industry members may be necessary for private industry standards to be effective. In the context of private reputational mechanisms like the New York Diamond Dealers Club, 208 Barak Richman has pointed out that the Club's use of reputational sanctions and voluntary refusals to deal with actors who flout industry norms, while welfare enhancing, could nonetheless amount to violations of antitrust law. 209 This echoes the concern raised by Andrew King and Michael Lenox in their extensive empirical analysis of the Responsible Care program created by the Chemical Manufacturers Association (now the American Chemistry Council). 210 King and Lenox concluded that the absence of explicit sanctions on members who failed to meet the standards set by the program left the program vulnerable to "opportunism." 211 While they suggested that industry associations could look to third parties to enforce the rules, 212 an alternative way to facilitate the long-term environmental benefits of stronger sanctions would be to interpret antitrust law in conformity with the environmental priority principle presented below. 213 [\*180] In some instances, the conflict between the values of promoting competition and conserving environmental resources can be stark. 214 Jonathan Adler, for example, has identified this conflict in the context of fisheries - a tragedy of the commons situation in which some form of collective action is required to avoid overfishing. 215 He cites as an example Manaka v. Monterey Sardine Industries, Inc., in which a fisherman was excluded from a local fishing cooperative. 216 The fisherman sued the cooperative under the Sherman Act, and the court found an antitrust violation in his exclusion. 217 While the fishing cooperative's policies were no doubt exclusionary, Adler contends that they also promoted conservation by restricting catch. 218 The fishery collapsed by the 1950s, a collapse Adler hypothesizes might have been "inevitable" but that perhaps might not have occurred in the absence of the antitrust suit. 219 While a court performing a rule of reason analysis must consider whether a restraint on trade suppresses or destroys competition, Adler points out that courts may also "consider offsetting efficiencies from otherwise anticompetitive arrangements." 220 It is not clear, however, that the courts have consistently taken these factors into account. 221 Among other potential remedies, Adler argues that to resolve this tension between antitrust law, on the one hand, and private collective action to conserve environmental resources, on the other, courts should more actively consider the "ancillary conservation benefits of otherwise anticompetitive conduct." 222 Recognizing the long-term health of a fishery would be consistent with antitrust law's purpose of ensuring viable markets exist in the future, and consistent with the environmental priority principle introduced below. 223

#### 3. Neg ground---new judicial questions provides ground for politics, FTC, court clog, and business certainty disads.

#### 4. Grammar---prohibition modifies anticompetitive practices---that requires effect.

#### 5. Aff innovation---rule of reason is the only antitrust key warrant---per se prohibitions mean an absolute ban of the activity which any regulation or states counterplan can solve. Huge FTC and politics DAs mean its try or die for aff innovation.

#### 6. Reasonability---their interp leads to arbitrary substance crowd out.

## T Subsets

### T Subsets---2AC

#### We meet---plan prohibits multiple anticompetitive unions throughout the economy and plan text in a vacuum. The AFF only has to provide an example of the res; changes the overall “private sector.”

#### The means unique.

Merriam Webster 8. 2008. “the.” <http://www.m-w.com/cgi-bin/dictionary>

b -- used as a function word to indicate that a following noun or noun equivalent is a unique or a particular member of its class <the President> <the Lord>

#### Private sector is any.

Dimple Sunayna Johnson 20. West Chester University Of Pennsylvania, Usa. "Public Versus Private Employees: A Perspective on the Characteristics and Implications". SAGE Journals. 2-20-2020. https://journals.sagepub.com/doi/full/10.1177/2319714519901081

Public Sector Definition and Distinction

For the purposes of this article, the public and private sectors will be conceptualized using the works of Baarspul and Wilderom (2011). The public sector is defined as any entity that is publicly funded and owned, and entities that are controlled by rules and directives. The private sector is defined as any entity that is privately funded and dictated by the market forces. The ‘differences between “public” and “private” organizations parallel the debate as to whether or not individuals behave differently in public- and private-sector’ (Baarspul & Wilderom, 2011, p. 969). As existing research is explored, it is important to remember that the core of the government is unlike any other entity. ‘Government administration differs from other administrative work to a degree not even faintly realized outside, by virtue of its public nature, the way in which it is subject to public scrutiny and public outcry’ (Appleby, 1945, p. 125).

#### Overlimits---no economy wide affs outside of consumer welfare---it was EXPLCITLY REJECTED by the community as the topic.

#### Causes bad PICs---they make “exempt any one company” compete. Moots the 1AC

#### “Substantial” modifies how we change it---means our change just has to be important

Supreme Court of Virginia 17. “Ulka DESAI, Executrix of the Estate of Lakshmi Desai, and as the Successor Trustee of the Revocable Trust Agreement of Lakshmi Desai as Amended v. A. R. DESIGN GROUP, INC.”Record No. 160814. https://caselaw.findlaw.com/va-supreme-court/1862832.html

Code § 43-5 provides that a memorandum “shall be sufficient if substantially in form and effect as follows.” Code § 43-15 expressly provides that the lien will not be invalidated if the memorandum reasonably identifies the property by the description given and it “conforms substantially to the requirements of §§ 43-5, 43-8 and 43-10, respectively, and is not wilfully false.” We have held that the word “inaccurate,” as used in Code § 43-15, is defined as “ ‘not accurate:  as ․ containing a mistake or error:  incorrect, erroneous.’ ” Reliable Constructors v. CFJ Props., 263 Va. 279, 281-82, 559 S.E.2d 681, 682 (2002) (quoting Webster's Third New International Dictionary 1139 (1993)). We have not defined what constitutes “substantially in form and effect” or “substantial conformity” in this context. The word “substantial” simply means “something of moment:  an important or material matter, thing, or part.” Webster's Third, at 2280.2 We hold that a defect in a memorandum of mechanic's lien is substantial if it would prejudice a party or if it would thwart one of the purposes underlying the statute.3

#### Kills topic education---biggest questions are about specific companies

#### Aff ground---states and antitrust PIC are stronger than any generics in the past decade---makes innovation necessary.

#### \*Topic literature and ground---what is covered is the debate.

Anu Bradford et al. 18. Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton, Chris Megaw & Nathaniel Sokol, Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets, JOURNAL OF EMPIRICAL LEGAL STUDIES, VOL. 16, P. 411, 2019 (2018). Available at: https://scholarship.law.columbia.edu/faculty\_scholarship/2514

2. Limits in the Scope of Competition Laws

Countries commonly carve out certain industries or enterprise types from the scope of their competition law. Our data shows that between 1950 and 2010, roughly twothirds of jurisdictions (68%) had at least one exemption in their laws in a given year.17 These exemptions are not only prevalent but also significant, both in terms of their economic and political impact. Often, they tell an important story about the political economy underlying a law, indicating which companies or industries enjoy special privileges or protection by their governments. It is plausible, even likely, that countries use exemptions as a way to shield certain industries or enterprise types from competition law and hence give them an edge over their competitors in the marketplace. Alternatively, an exemption may reflect the government’s view that certain enterprise types should instead be subjected to sector-specific regulations, by which its idiosyncratic characteristics can be better addressed. Our dataset offers the opportunity to systematically examine the types of industries and firms that governments treat differently by exempting them from competition scrutiny, and study how those exemptions differ across time and jurisdiction.

#### Reasonability---competing interps create a race to the bottom.

## States CP

### States---2AC

#### Unions are immune from state laws under the federal preemption doctrine---that’s Reynolds.

#### State labor actions get pre-empted under the NLRA---thousands of empirics.

Moshe Marvit 17. attorney and fellow at the Century Foundation, and co-author with Richard D. Kahlenberg of Why Labor Organizing Should Be a Civil Right: Rebuilding a Middle-Class Democracy by Enhancing Worker Voice. “The Way Forward for Labor Is Through the States.” The American Prospect. 9/1/2017. <https://prospect.org/labor/way-forward-labor-states/>

While reforms to federal law have been blocked by Congress, states and cities have faced a different hurdle: the courts. Starting in 1959, **the Supreme Court has written into the National Labor Relations Act (NLRA) a continually expanding preemption doctrine that prevents states and cities from passing laws that touch upon anything related to labor**, involve the interpretation of a collective bargaining agreement, or even involve issues that the courts believe Congress intended to leave to the free play of market forces. Congress can, and often does, expressly preempt states from passing laws that fall within a defined scope. Neither the NLRA nor its extensive legislative history, however, contains any mention of preemption: Congress did not expressly preempt states from acting. **In instances where Congress has not expressly preempted states from acting, state laws that actually conflict with federal laws are still preempted**. However, neither the NLRA nor its legislative history show any consensus that Congress meant to push states and cities from making laws that advanced, and do not conflict with, the pro-collective-bargaining policies of the NLRA. And yet, as Harvard Law Professor Ben Sachs has pointed out, the Supreme Court has not employed the typical typologies of preemption at all when dealing with labor law. Rather, it has created a preemption doctrine [that] is among the broadest and most robust in federal law. In most other areas of worker protection, from minimum wage to antidiscrimination laws, the federal government has set the floor under which states and cities may not go, but they can and often do raise the ceiling by increasing state or local minimum wage or including additional protected categories such as sexual orientation to existing protections. Indeed, the evolution of many of the nation's employment and civil rights protections began at the state level and trickled up to the federal government. It is only in the area of workers' labor rights that states and cities are powerless to act and that, solely as the result of judicial decisions. The Supreme Court's preemption doctrine started with the 1959 case, San Diego Building Trades v. Garmon, where the employer got a state court injunction against the union for picketing. The Supreme Court should have held that the picketing that the union was engaged in was a protected right under federal labor law, and therefore the state could not pass a law that conflicts with that right. Instead, the Court went further and held that Congress gave the National Labor Relations Board primary agency jurisdiction, and so when something is arguably protected or prohibited by the NLRA, then only the Board can act. Furthermore, only the Board can answer the initial question of whether conduct is arguably under the Board’s jurisdiction. The Supreme Court then doubled down on its preemption doctrine in the 1976 case, Machinists v. Wisconsin Employment Relations Commission. In the Machinist case, an employer brought an unfair labor practice charge against union workers who engaged in concerted refusal to work overtime during contract negotiations. The NLRB dismissed the charge because it held that the work refusal was not prohibited under the NLRA, so the employer brought a state court action against the union. In response, the Supreme Court expanded its earlier Garmon preemption to hold that Congress intended that certain conduct be left unregulated and left to be controlled by the free play of economic forces. Though the union in the Machinists case benefitted from the Court’s expansion of federal preemption, the decision has led to states and cities being almost absolutely prohibited from passing laws that promote unionization and collective bargaining. These Court decisions, and **thousands of lower court decisions that have followed the precedent in overturning state and local laws,** rely on three types of specious and archaic reasons that deserve challenge and reconsideration. First, the Court has repeatedly shown a strong reliance on the state of the economy and labor force during the time when these decisions were issued. In the Machinists case, the Court described how it experimented with various types of preemption before settling on the broad form begun by Garmon, stating, as it was, in short, experience, not pure logic, which initially taught that each of these methods sacrificed important federal interests in a uniform law of labor relations. The experience the Court referred to was that of the late 1940s and 1950s, when union membership was at its peak. Whatever balance between labor and management that may have existed then has since eroded. Second, the Court has long interpreted the statute to require a uniform labor law across the country, and yet, labor law has become in many ways a crazy quilt, varying from region to region, from state to state, and from one president to the next. The NLRB has become a highly politicized agency, with its decisions swinging wildly every time a new president appoints new members and a general counsel. Cases that proceed through the National Labor Relations Board are often appealed to federal courts, and different federal circuits often come to opposite conclusions, meaning that the laws in different states effectively differ though it is the courts, not state or local governments, that create those differences. Further, the expansion of state right to work laws, as well as a variety of state public sector labor laws have also undermined any goal of national uniformity in labor law. Lastly, the Court's determination that Congress intended to leave a wide variety of conduct to the free play of economic forces has, in the words of NYU Law Professor Cynthia Estlund, done what Congress did not do in the NLRA, or even with the Taft-Hartley Act: It has granted to employers a federal right to use their economic power against unions. The Congress that passed the NLRA may have intended to ensure a balance between employer and union power, but there is no indication that it intended employers to be able to use the Act to evade any regulation in broad areas through a laissez faire argument. The result of this judicially created broad preemption has been to limit state and local experimentation in line with what Justice Brandeis described as laboratories of democracy with labor laws that advance the stated purpose of federal labor law. However, since states and cities cannot act in the field of labor law, all discussions of federal labor law reform are purely theoretical and lack any empirical basis for their possible effects. Numerous labor law scholars have written critically over the years of the rationale for such broad preemption, as well as the effects it has had on workers' ability to organize. Recently, Lewis & Clark Law Professor Henry Drummonds came up with a list of ten potential reforms that would advance the pro-collective bargaining mission of the NLRA if states could be able to pass such reforms under normal preemption rules. These include allowing states to: increase damages for violating workers' labor rights so the penalties are in line with those for other forms of workplace discrimination; experiment with restrictions on permanent replacement of striking workers and on the use of employer lockouts; experiment with â€œcard checkâ€ recognition of the union; provide equal access to union advocates as well as employers during a campaign for unions; and require arbitration if an impasse arises in the bargaining over a first contract. **The one and only major state labor reform since** the **1935** enactment of the NLRA has had a profound effect on the division of wealth and power in the United States. That, of course, **was the provision of the 1947 Taft-Hartley Act enabling states to pass right to work laws.** Allowing states and cities to create local rules that promote unionization and collective bargaining that are tailored to local needs and local industries could prove just as significant in the opposite direction.

#### It’s a federal law---states can’t touch it---that’s Mooney and Baird.

#### Perm do both---shields the link.

#### Links to the net benefit---state action is contentious.

#### 50 states counterplans are a voter---distorts aff ground and research by shifting discussion from the action to the actor.

#### Perm do the counterplan.

## Sunsets CP

### Sunsets CP---2AC

#### Counterplans that include any function of the plan are a voter---they’re limitless and unpredictable and destroy aff ground---they subsume the aff which makes leveraging aff offense impossible---net-benefits alone solve their offense.

#### Congress votes against the AFF---Democrats hate it and will find pro-competitive purposes for workers---doesn’t solve and delay.

#### Perm do both.

#### Perm do the counterplan---counterplans must compete via text and function to preserve aff ground, predictability and literature controversy.

#### Doesn’t solve the AFF---sends mass uncertainty.

#### Legal change is key---the threat of unionization has immense macroeconomic impacts.

Mathieu Taschereau-Dumouchel 20. Cornell University. “The Union Threat” 03-16-20. <http://www.restud.com/wp-content/uploads/2020/05/MS20794manuscript.pdf>

As unions are now covering only about 7% of private sector jobs in the United States, many observers have argued that their impact on the aggregate economy must be small. In opposition to this view, this paper investigates how unions can nonetheless have a **sizable impact on the macroeconomy** through their **influence on nonunion firms.** Indeed, if unionization lowers profits, like **many studies** find, **vulnerable nonunion firms** might distort their behavior to **prevent their own unionization**. Through that channel, unions may **influence employment, wages and output** in many nonunion firms and, therefore, have a **larger impact on macroeconomic aggregates** than the unionization rate alone would suggest.

To analyze this mechanism, this paper proposes a novel general equilibrium theory of endogenous union formation in which each firm hires multiple workers who differ in their productivity. In the model, unionization is simply a way for the workers to force the firm into a different wage setting mechanism. If a simple majority of the workers vote in favor of unionization, a union is created and wages are bargained collectively between the firm and its employees. If, instead, the vote fails to gather enough support, the firm remains union-free and wages are bargained individually between each worker and the firm.

By changing how the surplus from production is split, unionization generates a conflict between the firm and its employees. Indeed, since collective bargaining allows the workers to extract a higher share of the surplus, creating a union increases the average wage and **lowers profits.** But unionization also creates a second conflict, this time between the workers themselves. As collective bargaining compresses the distribution of wages, high-productivity workers tend to vote against the creation of the union, while low-productivity workers tend to vote in its favor. To avoid unionization, the firm can therefore hire more high-skill workers and **fewer low-skill workers** to increase the employees’ opposition to the union and push the outcome of the vote in its favor.

This change in hiring in response to the threat of unionization is not motivated by production efficiency and leads to a higher marginal cost of production. As a consequence, threatened firms **hire fewer workers, produce less** and, because of decreasing returns to labor, pay higher wages. The threat also affects the variance of wages through the change in hiring. Since the firm over- hires high-productivity workers, their marginal product goes down as do their wages. The opposite happens to low-productivity workers, and nonunion firms therefore pay a narrower range of wages in response to the threat of unionization.

In the model, the labor market is subject to search frictions so that it takes time for workers to be matched with vacancies. The **unemployment rate is also affected by the union threat**. In general equilibrium, as threatened firms hire fewer workers, the **unemployment rate goes up** and it takes more time for workers to find jobs. Since unemployment becomes less attractive, firms are able to extract a higher share of the production surplus which **also pushes wages down.**

#### Perm do the AFF and the CP on antitrust. Text below.

#### The United States federal government should require that anticompetitive exemptions contain sunset provisions. Upon review, the United States federal government should determine that anticompetitive exemptions are to be approved only if they serve procompetitive purposes not already protected in the Sherman Act.

#### Sunsets invert basic principles of policymaking.

Martin Totaro and Connor Raso 21. Connor Raso is an attorney at the Securities and Exchange Commission. “Agencies should plan now for future efforts to automatically sunset their rules” Brookings. 02-25-21. https://www.brookings.edu/research/agencies-should-plan-now-for-future-efforts-to-automatically-sunset-their-rules/

First, an agency generally must go through the same rulemaking process to rescind a rule as it would to promulgate a new rule, including public notice of the agency’s explanation for changing policy and the opportunity to comment. The sunset rule, however, would have given the agency carte blanche ability to rescind a rule without notice and comment if the agency decided not to take the necessary steps to avoid sunsetting. That rescission-by-inaction would be vulnerable to a challenge that it draws no support from any statute or precedent; it deprives the public of the chance to comment on rescission of a particular rule; and it **inverts the basic principle** that a rule generally **stays on the books** absent an affirmative agency determination—after notice and comment and reasoned decision making and consideration of alternative approaches—that rescission is warranted.

Second, the sunset rule would have applied to already-final regulations. A challenger could have argued that, by doing so, the final rule in essence would have imposed a limitation on duration not intended at the time the original regulation was promulgated without adequate justification and opportunity for public comment. This type of automatic expiration differs in kind from other types of conditional expiration dates agencies sometimes embed and justify in specific rules at the time they are promulgated.

We offer no prediction whether these two challenges would have succeeded. But they will be important to consider as agencies decide whether and to what extent to try to insulate their rules from future sunsetting efforts.

PLANNING FOR FUTURE SUNSETTING EFFORTS

Agencies that want to protect their newly adopted rules should think about what they can do now in anticipation of likely future regulatory sunsetting efforts. We offer one such proposal: Agencies should consider including in new regulations a clear **anti-sunset statement** indicating that the agency **adopted the regulation with the expectation** that it would **not expire** absent a future rulemaking rescinding that particular rule. Although the language might vary depending on the nature of a particular regulation, the following template should help guide the process:

The agency is promulgating this rule based in part on its prediction of the specific costs and benefits of this rule. The agency **believes that its estimates are accurate** but recognizes the inherent uncertainty of any prediction. The agency wishes to make clear that, if the actual costs and benefits vary from these estimates, it does not intend for this rule to automatically sunset. Instead, the agency retains the opportunity to reevaluate the rule in the future based on a context-specific analysis of the facts and circumstances that led to the regulatory impact differing from the initial prediction.

#### Links to the net benefit---review delays legislation.

## Offsets CP

### Offsets---2AC

#### Doesn’t solve the affirmative---creates a carved-out exemption for gun control which still kills trust and rule of law AND exempts an area of industry which ensures other’s claim the same and collapse the economy.

#### Perm do the CP--- counterplans must compete via text and function to preserve aff ground, predictability and literature controversy.

#### Increase means greater---doesn’t mean net.

Reinhardt 05. Circuit Judge. "Reynolds v. Hartford Fin. Services Group, 426 F.3d 1020". No Publication. 10-3-2005. https://casetext.com/case/reynolds-v-hartford-fin-services-group

Specifically, we must decide whether charging a higher price for initial insurance than the insured would otherwise have been charged because of information in a consumer credit report constitutes an "increase in any charge" within the meaning of FCRA. First, we examine the definitions of "increase" and "charge." Hartford Fire contends that, limited to their ordinary definitions, these words apply only when a consumer has previously been charged for insurance and that charge has thereafter been increased by the insurer. The phrase, "has previously been charged," as used by Hartford, refers not only to a rate that the consumer has previously paid for insurance but also to a rate that the consumer has previously been quoted, even if that rate was increased before the consumer made any payment. Reynolds disagrees, asserting that, under the ordinary definition of the term, an increase in a charge also occurs whenever an insurer charges a higher rate than it would otherwise have charged because of any factor — such as adverse credit information, age, or driving record — regardless of whether the customer was previously charged some other rate. According to Reynolds, he was charged an increased rate because of his credit rating when he was compelled to pay a rate higher than the premium rate because he failed to obtain a high insurance score. Thus, he argues, the definitions of "increase" and "charge" encompass the insurance companies' practice. Reynolds is correct.

"Increase" means to make something greater. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The action, process, or fact of becoming or making greater; augmentation, growth, enlargement, extension."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) (defining "increase" as "growth, enlargement, etc[.]"). "Charge" means the price demanded for goods or services. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The price required or demanded for service rendered, or (less usually) for goods supplied."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) ("[T]he cost or price of an article, service, etc."). Nothing in the definition of these words implies that the term "increase in any charge for" should be limited to cases in which a company raises the rate that an individual has previously been charged.

#### Offsets counterplans are a voter---generate artificial net benefits that skirt core topic discussions---decks clash and education.

#### Perm do both---the CP plank serves as a clarification of the areas the plan would apply to and explicitly exempts gun manufacturers---there’s no reason the plan expands ALL anti-trust which proves there’s no link to the net benefit since they have zero evidence unions exemptions tread the needle.

Text: The United States federal government should increase prohibitions on anticompetitive private sector collective bargaining business practices in the United States and reduce prohibitions on anticompetitive business practices by the private sector by immunizing gun manufacturers from antitrust liability.

#### Cross apply extinction outweighs from the K.

#### Zero political will for gun control---democratic control of congress and presidency hasn’t spurred action OR it inevitably will and the CP isn’t key.

### Condo---2AC

#### Conditionality is a voter---causes time and strategy skew, it’s not reciprocal, and promotes argumentative irresponsibility---dispo solves

## Cap K

### Topline---2AC

#### Framework---weigh the implementation of the plan. Any alternative must defend uniqueness and material solvency---key to clash, advocacy, and fairness.

### Sustainability---2AC

#### Growth is sustainable and solves a laundry list of threats.

Mark Budolfson 21. PhD in Philosophy. Assistant Professor in the Department of Environmental and Occupational Health and Justice at the Rutgers School of Public Health and Center for Population–Level Bioethics "Arguments for Well-Regulated Capitalism, and Implications for Global Ethics, Food, Environment, Climate Change, and Beyond". Cambridge Core. 5-7-2021. https://www-cambridge-org.proxy.library.emory.edu/core/journals/ethics-and-international-affairs/article/arguments-for-wellregulated-capitalism-and-implications-for-global-ethics-food-environment-climate-change-and-beyond/96F422D04E171EECDEF77312266AE9DD

Discourse on food ethics often advocates the anti-capitalist idea that we need less capitalism, less growth, and less globalization if we want to make the world a better and more equitable place, with arguments focused on applications to food, globalization, and a just society. For example, arguments for this anti-capitalist view are at the core of some chapters in nearly every handbook and edited volume in the rapidly expanding subdiscipline of food ethics. None of these volumes (or any article published in this subdiscipline broadly construed) focuses on a defense of globalized capitalism.1

More generally, discourse on global ethics, environment, and political theory in much of academia—and in society—increasingly features this anti-capitalist idea as well.2 The idea is especially prominent in discourse surrounding the environment, climate, and global poverty, where we face a nexus of problems of which capitalism is a key driver, including climate change, air and water pollution, the challenge of feeding the world, ensuring sustainable development for the world's poorest, and other interrelated challenges.

It is therefore important to ask whether this anti-capitalist idea is justified by reason and evidence that is as strong as the degree of confidence placed in it by activists and many commentators on food ethics, global ethics, and political theory, more generally.

In fact, many experts argue that this anti-capitalist idea is not supported by reason and argument and is actually wrong. The main contribution of this essay is to explain the structure of the leading arguments against the anti-capitalist idea, and in favor of the opposite conclusion. I begin by focusing on the general argument in favor of well-regulated globalized capitalism as the key to a just, flourishing, and environmentally healthy world. This is the most important of all of the arguments in terms of its consequences for health, wellbeing, and justice, and it is endorsed by experts in the empirically minded disciplines best placed to analyze the issue, including experts in long-run global development, human health, wellbeing, economics, law, public policy, and other related disciplines. On the basis of the arguments outlined below, well-regulated capitalism has been endorsed by recent Democratic presidents of the United States such as Barack Obama, and by progressive Nobel laureates who have devoted their lives to human development and more equitable societies, as well as by a wide range of experts in government and leading nongovernmental organizations.

The goal of this essay is to make the structure and importance of these arguments clear, and thereby highlight that discourse on global ethics and political theory should engage carefully with them. The goal is not to endorse them as necessarily sound and correct. The essay will begin by examining general arguments for and against capitalism, and then turn to implications for food, the environment, climate change, and beyond.

Arguments for and against Forms of Capitalism

The Argument against Capitalism

Capitalism is often argued to be a key driver of many of society's ills: inequalities, pollution, land use changes, and incentives that cause people to live differently than in their ideal dreams. Capitalism can sometimes deepen injustices. These negative consequences are easy to see—resting, as they do, at the center of many of society's greatest challenges.3

And at the same time, it is often difficult to see the positive consequences of capitalism.4 What are the positive consequences of allowing private interests to clear-cut forests and plant crops, especially if those private interests are rich multinational corporations and the forests are in poor, developing countries whose citizens do not receive the profits from deforestation? Why give private companies the right to exploit resources at all, since exploitation almost always has some negative consequences such as those listed above? These are the right questions to ask, and they highlight genuine challenges to capitalism. And in light of these challenges, it is reasonable to consider the possibility that perhaps a different economic system altogether would be more equitable and beneficial to the global population.

The Argument for Well-Regulated Capitalism

However, things are more complicated than the arguments above would suggest, and the benefits of capitalism, especially for the world's poorest and most vulnerable people, are in fact myriad and significant. In addition, as we will see in this section, many experts argue that capitalism is not the fundamental cause of the previously described problems but rather an essential component of the best solutions to them and of the best methods for promoting our goals of health, well-being, and justice.

To see where the defenders of capitalism are coming from, consider an analogy involving a response to a pandemic: if a country administered a rushed and untested vaccine to its population that ended up killing people, we would not say that vaccines were the problem. Instead, the problem would be the flawed and sloppy policies of vaccine implementation. Vaccines might easily remain absolutely essential to the correct response to such a pandemic and could also be essential to promoting health and flourishing, more generally.

The argument is similar with capitalism according to the leading mainstream arguments in favor of it: Capitalism is an essential part of the best society we could have, just like vaccines are an essential part of the best response to a pandemic such as COVID-19. But of course both capitalism and vaccines can be implemented poorly, and can even do harm, especially when combined with other incorrect policy decisions. But that does not mean that we should turn against them—quite the opposite. Instead, we should embrace them as essential to the best and most just outcomes for society, and educate ourselves and others on their importance and on how they must be properly designed and implemented with other policies in order to best help us all. In fact, the argument in favor of capitalism is even more dramatic because it claims that much more is at stake than even what is at stake in response to a global pandemic—what is at stake with capitalism is nothing less than whether the world's poorest and most vulnerable billion people will remain in conditions of poverty and oppression, or if they will instead finally gain access to what is minimally necessary for basic health and wellbeing and become increasingly affluent and empowered. The argument in favor of capitalism proceeds as follows:

Premise 1. Development and the past. Over the course of recorded human history, the majority of historical increases in health, wellbeing, and justice have occurred in the last two centuries, largely as a result of societies adopting or moving toward capitalism. Capitalism is a relevant cause of these improvements, in the sense that they could not have happened to such a degree if it were not for capitalism and would not have happened to the same degree under any alternative noncapitalist approach to structuring society. The argument in support of this premise relies on observed relationships across societies and centuries between indicators of degree of capitalism, wealth, investments in public goods, and outcomes for health, wellbeing, and justice, together with econometric analysis in support of the conclusion that the best explanation of these correlations and the underlying mechanism is that large increases in health, wellbeing, and justice are largely driven by increasing investments in public goods. The scale of increased wealth necessary to maximize these investments requires capitalism. Thus, as capitalist societies have become dramatically wealthier over the past hundred years (and wealthier than societies with alternative systems), this has allowed larger investments in public goods, which simply has not been possible in a sustained way in societies without the greater wealth that capitalism makes possible. Important investments in public goods include investments in basic medical knowledge, in health and nutrition programs, and in the institutional capacity and know-how to regulate society and capitalism itself. As a result, capitalism is a primary driver of positive outcomes in health and wellbeing (such as increased life expectancy, lowered child and maternal mortality, adequate calories per day, minimized infectious disease rates, a lower percentage and number of people in poverty, and more reported happiness);5 and in justice (such as reduced deaths from war and homicide; higher rankings in human rights indices; the reduced prevalence of racist, sexist, homophobic opinions in surveys; and higher literacy rates).6 These quantifiable positive consequences of global capitalism dramatically outweigh the negative consequences (such as deaths from pollution in the course of development), with the result that the net benefits from capitalism in terms of health, wellbeing, and justice have been greater than they would have been under any known noncapitalist approach to structuring society.7

Premise 2. Economics, ethics, and policy. Although capitalism has often been ill-regulated and therefore failed to maximize net benefits for health, wellbeing, and justice, it can become well-regulated so that it maximizes these societal goals, by including mechanisms identified by economists and other policy experts that do the following:

* optimally8 regulate negative effects such as pollution and monopoly power, and invest in public goods such as education, basic healthcare, and fundamental research including biomedical knowledge (more generally, policies that correct the failures of free markets that economists have long recognized will arise from “externalities” in the absence of regulation);9
* ensure equity and distributive justice (for example, via wealth redistribution);10
* ensure basic rights, justice, and the rule of law independent of the market (for example, by an independent judiciary, bill of rights, property rights, and redistribution and other legislation to correct historical injustices due to colonialism, racism, and correct current and historical distortions that have prevented markets from being fair);11 and
* ensure that there is no alternative way of structuring society that is more efficient or better promotes the equity, justice, and fairness goals outlined above (by allowing free exchange given the regulations mentioned).12

To summarize the implication of the first two premises, well-regulated capitalism is essential to best achieving our ethical goals—which is true even though capitalism has certainly not always been well regulated historically. Society can still do much better and remove the large deficits in terms of health, wellbeing, and justice that exist under the current inferior and imperfect versions of capitalism.

Premise 3. Development and the future. If the global spread of capitalism is allowed to continue, desperate poverty can be essentially eliminated in our lifetimes. Furthermore, this can be accomplished faster and in a more just way via well-regulated global capitalism than by any alternatives. If we instead opt for less capitalism, less growth, and less globalization, then desperate poverty will continue to exist for a significant portion of the world's population into the further future, and the world will be a worse and less equitable place than it would have been with more capitalism. For example, in a world with less capitalism, there would be more overpopulation, food insecurity, air pollution, ill health, injustice, and other problems. In part, this is because of the factors identified by premise 1, which connect a turn away from capitalism with a turn away from continuing improvements in health, wellbeing, and justice, especially for the developing world. In addition, fertility declines are also a consequence of increased wealth, and the size of the population is a primary determinant of food demand and other environmental stressors.13 Finally, as discussed at length in the next section of the essay, capitalism can be naturally combined with optimal environmental regulations.14 Even bracketing anything like optimal regulation, it remains true that sufficiently wealthy nations reduce environmental degradation as they become wealthier, whereas developing nations that are nearing peak degradation will remain stuck at the worst levels of degradation if we stall growth, rather than allowing them to transition to less and less degradation in the future via capitalism and economic growth.15 In contrast, well-regulated capitalism is a key part of the best way of coping with these problems, as well as a key part of dealing with climate change, global food production, and other specific challenges, as argued at length in the next section. Here it is important to stress that we should favor well-regulated capitalism that includes correct investments in public goods over other capitalist systems such as the neoliberalism of the recent past that promoted inadequately regulated capitalism with inadequate concern for externalities, equity, and background distortions and injustices.16

Conclusion. Therefore, we should be in favor of capitalism over noncapitalism, and we should especially favor well-regulated capitalism, which is the ethically optimal economic system and is essential to any just basic structure for society.

This argument is impressive because, as stated earlier in the essay, it is based on evidence that is so striking that it leads a bipartisan range of open-minded thinkers and activists to endorse well-regulated capitalism, including many of those who were not initially attracted to the view because of a reasonable concern for the societal ills with which we began. To better understand why such a range of thinkers could agree that well-regulated capitalism is best, it may help to clarify some things that are not assumed or implied by the argument for it, which could be invoked by other bad arguments for capitalism.

One thing the argument above does not assume is that health, wellbeing, or justice are the same thing as wealth, because, in fact, they are not. Instead, the argument above relies on well-accepted, measurable indicators of health and wellbeing, such as increased lifespan; decreased early childhood mortality; adequate nutrition; and other empirically measurable leading indicators of health, wellbeing, and justice.17 Similarly, the argument that capitalism promotes justice, peace, freedom, human rights, and tolerance relies on empirical metrics for each of these.18

Furthermore, the argument does not assume that because these indicators of health, wellbeing, and justice are highly correlated with high degrees of capitalism, that therefore capitalism is the direct cause of these good outcomes. Rather, the analyses suggest instead that something other than capitalism is the direct cause of societal improvements (such as improvements in knowledge and technology, public infrastructure, and good governance), and that capitalism is simply a necessary condition for these improvements to happen.19 In other words, the richer a society is, the more it is able to invest in all of these and other things that are the direct causes of health, wellbeing, and justice. But, to maximize investment in these things societies need well-regulated capitalism.

As part of these analyses, it is often stressed that current forms of capitalism around the world are highly defective and must be reformed in the direction of well-regulated capitalism because they lack investments in public goods, such as basic knowledge, healthcare, nutrition, other safety nets, and good governance.20 In this way, an argument for a particular kind of progressive reformism is an essential part of the analyses that lead many to endorse the more general argument for well-regulated capitalism.

Although these analyses are nuanced, and appropriately so, it remains the case that the things that directly lead to health, wellbeing, and justice require resources, and the best path toward generating those resources is well-regulated capitalism. And on the flip side, according to the analyses behind premise 1 described above, an anti-capitalist system would not produce the resources that are needed, and would thus be a disaster, especially for the poorest billion people who are most desperately in need of the resources that capitalism can create and direct, to escape from extreme poverty.21

### No Link---2AC

#### No link---antitrust law doesn’t expand capital control---reduces monopolization.

#### Perm---do both. If the alt can overcome the links to the status quo, it can overcome the aff.

### Environment Impact---2AC

#### Past the tipping point and the alt is dictatorship and genocide---only tech can solve.

Eric Levitz 5/17/21. Senior Writer at New York Magazine. MA Johns Hopkins. "We’ll Innovate Our Way Out of the Climate Crisis or Die Trying". Intelligencer. 5-17-2021. https://nymag.com/intelligencer/2021/05/climate-biden-green-tech-innovation.html

Today’s best-case ecological scenario was a horror story just three decades ago. In 1993, Bill Clinton declared that global warming presented such a profound threat to civilization that the U.S. would have to bring its “emissions of greenhouse gases to their 1990 levels by the year 2000.” Instead, we waited until 2020 to do so; in the interim, humanity burned more carbon than it had since the advent of agriculture. Now, it will take a historically unprecedented, worldwide economic transformation to freeze warming at “only” 2 degrees — a level of temperature rise that will turn “once in a century” storms into annual events, drown entire island nations, and render major cities in the Middle East uninhabitable in summertime (at least for those whose lifestyles involve “walking outdoors without dying of heatstroke”). This is what passes for a utopian vision in 2021. If we confine ourselves to mere optimism — and assume that every Paris Agreement signatory meets its current pledged target for decarbonization — then warming will hit 2.4 degrees by century’s end.

The reality of our ecological predicament invites denial of our political one. Put simply, it is hard to reconcile the scale of the climate crisis with the limits of contemporary American politics. Delusions rush in to fill the gap. Among these is the fantasy of national autonomy; the notion that the United States can save the planet or destroy it, depending on the precise timeline of its domestic decarbonization. A rapid energy transition in the U.S. is a vital cause, not least for its potential to expedite similar transformations abroad. But the battle for a sustainable planet will be won or lost in the developing world. Although American consumption played a central role in the history of the climate crisis, it is peripheral to the planet’s future: Over the coming century, U.S. emissions are expected to account for only 5 percent of the global total.

There is also the delusion of “de-growth’s” viability. The fact that there is no plausible path for global economic expansion that won’t entail climate-induced death and displacement has led some environmentalists to insist on global stagnation. Yet there is neither a mass constituency for this project, nor any reason to believe that there will be any time soon. Freeze the status-quo economy in amber, and you’ll condemn nearly half of humanity to permanent poverty. Divide existing GDP into perfectly even slices, and every person on the planet will live on about $5,500 a year. American voters may express a generalized concern about the climate in surveys, but they don’t seem willing to accept even a modest rise in gas prices — let alone a total collapse in living standards — to address the issue. Meanwhile, any Chinese or Indian leader who attempted to stymy income growth in the name of sustainability would be ousted in short order. It’s conceivable that one could radically reorder advanced economies in a manner that enabled living standards to rise even as GDP fell; Americans might well find themselves happier and more secure in an ultra-low-carbon communal economy in which individual car ownership is heavily restricted, and housing, healthcare, and myriad low-carbon leisure activities are social rights. But nothing short of an absolute dictatorship could affect such a transformation at the necessary speed. And the specter of eco-Bolshevism does not haunt the Global North. Humanity is going to find a way to get rich sustainably, or die trying.

Thus, the chasm between the ecologically necessary and the politically possible can only be bridged by technological advance. And on that front, the U.S. actually has the resources to make a decisive contribution to global decarbonization — and some political will to leverage those resources. Unfortunately, due to some combination of fiscal superstitions and misplaced priorities, the Biden administration’s proposed investments in green innovation remain paltry. An American Jobs Plan with much higher funding for green R&D is both imminently winnable and environmentally imperative. U.S. climate hawks should make securing such legislation a top priority.

The choice before us is techno-optimism or barbarism.

If governments are forced to choose between increasing income growth in the present, and mitigating temperature rise in the future, they are going to pick the former. We’ll get cheap, lab-grown Kobe beef before we get a U.S. Senate willing to tax meat, and steel plants powered by “green hydrogen” before we get anarcho-primitivism with Chinese characteristics.

The question is whether we’ll get such breakthroughs before it’s too late.

Techno-optimism has its hazards, but the progress we’ve made toward decarbonization has come largely through technological innovation. When India canceled plans to construct 14 gigawatts of new coal-fired power stations in 2019, it did not do so in deference to international pressure or domestic environmental movements, but rather to the cost-competitiveness of solar energy. The same story holds across Asia’s developing countries: Thanks to a ninefold reduction in the cost of solar energy over the past decade, the number of new coal plants slated for construction in the region has fallen by 80 percent. Meanwhile, the road to an electric-car revolution was cleared by a collapse in the cost of lithium batteries, the challenge of powering cities with solar energy on cloudy days was eased by a 70 percent drop in the price of utility-scale batteries, and wind power grew 40 percent cheaper. Our species remains lackluster at solidarity and self-government, but we’ve got a real knack for building cool shit.

The technological progress of the past decade was not sufficient to compensate for tepid climate policy. But real techno-utopianism has never been tried: As of 2019, global spending on clean energy R&D totaled $22 billion a year, or 3 percent of the Pentagon’s annual budget. Increasing spending on such research — while expediting cost-reductions in existing technologies by deploying them en masse — should be twin priorities of American climate policy.

The preconditions for green industrialization can be made in America.

The United States has more fiscal capacity and better-financed research universities than any nation on the planet. And, for all the pathologies of our politics, public investment in green tech inspires far weaker opposition than many less-indispensable climate policies. In fact, late last year, with Republicans controlling the Senate and Donald Trump in the White House, the U.S. increased funding for zero-emission technology R&D by $35 billion. America does not have sovereignty over enough humans to save the planet by slashing our domestic emissions. But we just might have the resources and political economy necessary to help the developing world save us all.

Although progress on renewables has exceeded optimistic expectations, the technical obstacles to global decarbonization remain immense. In the most optimistic scenario, scaling up existing, cost-competitive technologies can get us about 16 percent of the emissions reductions necessary for achieving net-zero by 2050, according to the International Energy Agency. Driving down the price of tech we already have will get us another 39 percent. The rest must come from technologies that have yet to be fully developed. We need electrified cement, hydrogen-powered steel plants, and evaporative cooling. We need utility-scale energy storage, electric airplanes, and ultra-high voltage transmission lines. And we’d be remiss to not toss a bit of our collective wealth at game-changing hail marys like nuclear fusion.

#### But it doesn’t cause extinction.

Zeke Hausfather & Glen P. Peters 20. \*Director of climate and energy at the Breakthrough Institute in Oakland, California. \*\*Research director at the CICERO Center for International Climate Research in Oslo, Norway. "Emissions – the ‘business as usual’ story is misleading". Nature. 1-29-2020. https://www.nature.com/articles/d41586-020-00177-3

In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

### Alt---2AC

#### System changes are infeasible---can’t get governmental or international buy-in---reform is comparatively quicker.

Ezra Klein 8/31/21. American journalist, political analyst, New York Times columnist, and the host of The Ezra Klein Show podcast. "Transcript: Ezra Klein Answers Listener Questions". No Publication. 8-31-2021. https://www.nytimes.com/2021/08/31/podcasts/transcript-ezra-klein-ask-me-anything.html

EZRA KLEIN: Yeah. And maybe we should do an episode on this. I have very complicated feelings about degrowth. So one is that it is tricky to talk about, as you say, because I find its advocates will continue to say that you’re defining it wrong. So let me use a definition from Hickel, which is, and I’m quoting him here, “Degrowth is a planned reduction of energy and resource throughput designed to bring the economy back into balance with the living world in a way that reduces inequality and improves human well-being.”

And so I’d note two things here. One is “designed.” Degrowth is, as its advocates understand it, a act of global economic planning really without equal anywhere in human history. It is an act of extraordinary central planning. So that’s one thing that is going to become important in my answer.

I’d say there’s part of this vision I’m sympathetic to, and then part of it that I just don’t think holds together. I would distinguish a critique of want and a critique of growth. And the way I would do that is that, as you hear if you listen to the show, I’m pretty critical of a lot of the ways capitalism generates desire.

Desire is something we build through advertising, through social mimicry. This is a show that is supported by advertising. This is part of the desire- generation complex in its business model. And we are told and taught to want a lot of things, not only that we don’t need, but that don’t make us happier. And so not all growth as measured by G.D.P. is good growth.

But a lot of what people want is fine, or great, or whatever. It’s their desire, and it’s not for me to tell them the jeans they’re interested in are incorrect. And a lot of it I don’t think is under the power of policymakers to control. I don’t think it’s all advertising. I don’t know that if you cut down advertising, the amount people would spend on consumption would go way down. They might simply consume other things.

And so I want people to have rich, materially fulfilling lives. And I think it’ll be a very hard piece to change. So in terms of having a counterweight to the materialism, the ideology of materialism in modern society, that’s a part of degrowth that I’m very open to.

But now let me talk about degrowth more in the terms of it is a direct political project, which is as an answer to climate change. I would cut this into a few pieces. Is degrowth necessary for addressing climate change? Is it the fastest way to address climate change? And is it desirable? It has to be at least one of those things to be the strategy you’d want to take.

And I don’t think it is. Let’s start with necessary. Many countries in Europe, even the United States, are growing while reducing their carbon footprint. Now, you could say they’re not doing so fast enough depending on the country. But they could all do so much faster if there was enough political will to deploy more renewable technology, to tax carbon, to do a bunch of things that we have not been able to pass. So it is clearly true that we can decouple growth and energy usage.

Hickel, to be fair, will say that that may be true. But given the speed at which we need to act, we can’t just be deploying renewable energy technology. It would also help the situation if we stopped using as much through material consumption. That is, I think, conceptually true and politically false.

I mean, let’s just state that speed is, first and foremost, a political problem. There is a delta between where we are right now in terms of what we are doing on climate change and where we could be. That delta is big, and that delta gets bigger every year because it gets harder every year. And the time we have to act before we start getting some of the really truly catastrophic feedback loops in play is shortening. So you’re now talking here about the speed at which you can move politics.

So for something to be faster, it doesn’t just need to be faster if you implemented it. It needs to be something you can implement such it accelerates the politics of radical climate action. And that’s where I think degrowth completely falls apart. And I have tried to look for the answer people give on this, and I’ve never found one that is convincing.

So again, I’ll quote Hickel on this: “Degrowth has a discriminating approach to reducing economic activity. It seeks to scale down ecologically destructive and socially less necessary production, i.e., the production of S.U.V.s, arms, beef, private transportation, advertising and planned obsolescence” — by which he means there, the fact that expiration dates are built into a lot of our electronics — “while expanding socially important sectors like health care, education, care and conviviality.”

And I’d urge people to think about that for a minute. I mean, you can listen to that and you will assume correctly that I am sympathetic to the idea that a lot of those goods are not great. I’m a vegan. I don’t eat beef. I would like nobody else to eat beef.

I think that if the political demand of the climate movement becomes you don’t get to eat beef, you will set climate politics back so far, so fast, it would be disastrous. Same thing with S.U.V.s. I don’t like S.U.V.s. I don’t drive one. But if you are telling people in rich countries that the climate movement is for them not having the cars they want to have, you are just going to lose. You are going to lose fast.

We watched this happen for years before Elon Musk and some others began inventing cars that were both electrified and were actually cool cars. You weren’t going to get everybody in a Prius. You might, over time, get them into the post-Tesla generations of electronic vehicles.

This is where the politics of it for me fall apart. I’d at least like to see some empirical evidence for the claim that degrowthers are right, and that their appeal will speed the politics of doing hard things on climate change. Because I think it will do the opposite. And I don’t see politicians winning in the countries they would need to win on anything like this platform. Quite the contrary.

I watched the most effective attack against Joe Biden’s climate policies. It dominated the news for a day or two. It was Fox News just making up — just completely making up — a false claim that Biden was going to limit or restrict red meat.

ANNIE GALVIN: Right. [LAUGHS]

EZRA KLEIN: So my worry with degrowth is that it is trying to take the politics out of politics. It is attacking the flaws of the current strategy as not moving fast enough when the impediments are political, but then not accepting the impediments to its own political path forward.

I will say, because I think it’ll be weird to people if I don’t mention this, that there is the big problem, of course, that the rising generation of emissions is coming from China, from India. I think it’s something like ⅔ of emissions are now from middle income countries. That is only going up.

Hickel and other degrowthers will say that, yes, the point of this is that the rich countries, which have already used more than their fair share of the carbon budget, should cut their carbon usage so poor countries can grow. I cannot imagine how you are going to enforce this as a political and economic planning regime. How you will get rich countries to agree to do less so poor countries can have more. I mean, look at what has happened with vaccine hoarding.

I don’t want to say that this isn’t a good moral weight on the conversation or, in the long term, a good push for people to think about different ways of having growth, different ways of human flourishing. But the entirety — as the degrowth people will agree — the entire question of the climate change conversation is speed. And I just don’t see the argument for degrowth as being anything but an extraordinarily slower way of approaching the politics, probably counterproductive compared to what we’re doing, which is I think you can make tremendous strides on climate change by deploying renewable energy technologies and giving people the opportunity to have a more materially fulfilling life atop those technologies.

And by the way, when that happens in rich countries, as we have seen, it ends up subsidizing these renewable energy technological advances for poorer countries. So it is a fact that Germany and other countries did so much to subsidize solar for themselves, it has also made it possible for countries like China and India to have such a rapid advance in solar technology that it’s affordable for them to do a lot of their growth on that platform.

So I also think there are cross-subsidies in rich countries trying to maintain growth renewable energy deployment that end up helping poor countries change what they’re doing in a useful way, too. So that’s my take on degrowth. But I understand its appeal. I just don’t understand its politics.

### Theory---2AC

#### Perf Con is a voter---justifies bad research and makes offense impossible since they can cross-apply contradictory offense---at worst, justifies severance.

#### Floating PIKS are a voter---steals the 1AC---wrecks fairness, clash and education by eliminating any ability to weigh offense.

## Sohn DA

### Sohn DA---2AC

#### No link---plan unrelated to FCC. The Carstensen evidence isn’t about the FCC or AFF. CX proves we turn it---the AFF isn’t pro-workers over business interests.

#### Sohn nomination is deadlocked---support isn’t enough, Dems won’t show up.

Alex Wong 3/31. Staff Writer at Inside Radio. “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo.”https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html.

Five months after President Biden nominated Gigi Sohn to fill an open Democratic seat on the Federal Communications Commission, she is still on the sidelines and the FCC remains with a two-two deadlock along party lines. If and when her nomination advances will not only come down to whether Senate Democrats all support her, but also attendance in the chamber. Sohn’s nomination vote in the Senate Commerce Committee tied 14-14 earlier this month. That means it will require a motion to discharge from the Majority Leader in order to be placed on the Senate calendar. But in order for that to pass, all 50 Democrats will need to be present to overcome what is expected to be universal opposition among Republican lawmakers. Vice President Kamala Harris would then break the tie in the evenly split Senate. Supporters of Sohn’s nomination are hoping that the two-step process – a vote on her confirmation would follow the discharge – could come within the next week or two.

#### And she won’t get nominated because of her clear conflict of interest.

Alex Wong 3/31. Staff Writer at Inside Radio. “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo.”https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html.

But GOP members are hoping to peel off a Democrat, arguing Sohn’s positions on broadband net neutrality would be bad for rural states. They also argue that her past work with the now-closed television streaming service Locast should disqualify her from consideration. Sohn has agreed to recuse herself temporarily from matters involving retransmission consent or television broadcast copyright for the first three years of her term in order to address those concerns. “Why on Earth should we choose a commissioner who would have to recuse herself from participating in substantial parts of the FCC's work? How does it serve Americans to have an FCC Commissioner who can't fully do her job,” said Senator John Thune (R-SD). “Surely, there are other qualified nominees who don't have Ms. Sohn's conflict of interest,” he said in a speech on the Senate floor earlier this month.

#### Not intrinsic---do plan and confirm.

#### She’s not key to net neutrality---another nominee or replacement solves.

### AT: Net Neutrality

#### Net neutrality doesn’t stop balkanization

Ken Engelhart, 19. . "The net neutrality fanatics were wrong". financialpost. 11-21-2019. <https://financialpost.com/opinion/the-net-neutrality-fanatics-were-wrong>

Canada offers an interesting point of comparison — and a kind of natural experiment. Around the same time that the U.S. got rid of net neutrality laws, this country passed some of the strictest net neutrality regulations in the world. You might have expected that as a result two very different internets would develop in the two countries.

It didn’t happen. The U.S. and Canada have the same internet, with almost the exact same average speeds. Users sitting in their dens could not tell the difference. What does this tell us? It suggests that net neutrality regulations have very little practical effect. In the end, it seems that public interest groups and regulators were selling the public elephant repellant: a harmless, but useless spray, meant to defend against a threat that does not exist. Why then, you might ask, shouldn’t countries impose net neutrality laws anyway — just in case? The answer is that regulations can have unintended and negative side effects. In Canada, for instance, net neutrality regulations prevented Quebec’s Videotron from providing free data for music downloads to its cellphone customers. As a result, Quebec consumers lost out on free stuff. In October, the U.S. Court of Appeals for the D.C. Circuit upheld the FCC’s 2017 decision. The court stated that although the FCC is not permitted to impose a blanket prohibition on state legislation it can block specific state laws that conflict with its decision. At least for a while, the lack of net neutrality regulation will stand. I think we should relax and enjoy the internet. The modern internet is “neutral,” not because the government made it so, but because it evolved naturally that way. Neutrality, in other words, is an organic and emergent product of the internet — and we don’t need fancy new regulations to keep it that way.

#### Regulatory swings on net neutrality are worse

Jennifer Huddleston 21. "The Problematic Potential Return of Net Neutrality". AAF. 5-4-2021. https://www.americanactionforum.org/insight/the-problematic-potential-return-of-net-neutrality/

The Problems of Continued Regulatory Pendulum Swings

The constant cycle of regulatory changes regarding net neutrality also has its risks for innovation and investment. Not knowing how various elements of the internet will be regulated from administration to administration could discourage expansion or investment. A better route than ever-changing FCC interpretations would be congressional action to clarify the regulatory status of the internet and the appropriate authorities involved. Ideally this clarification would avoid a reclassification under Title II and its associated problems, but it should provide greater clarity around the authority of the FCC or FTC to address this recurring policy debate. Such an approach would provide better regulatory certainty for innovators and clearer guidance for regulators. Congressional action could also address issues associated with a potentially emerging patchwork of state laws that could disrupt the internet by providing clear preemption directing that many internet issues are to be decided as a federal matter. Yet if Congress acts on the matter, it should avoid many of the burdensome elements that a renewed Title II classification could bring with it and instead seek to create a solution that provides clarity around appropriate regulatory authority and certainty for innovators and investors.

## Bedoya DA

### Bedoya DA---2AC

#### Won’t be confirmed---missing votes.

Brendan Bordelon 3-23. "President Biden's FTC and FCC nominees face further confirmation delays". Benton Foundation. 3-23-2022. https://www.benton.org/headlines/president-bidens-ftc-and-fcc-nominees-face-further-confirmation-delays

Senate Democrats likely won’t be setting up floor votes this week on President Biden’s long-pending Federal Trade Commission and Federal Communications Commission nominees, according to Senate Commerce Chair Maria Cantwell (D-WA). “We’re missing a few people,” she said, citing the absence of Sen Jeanne Shaheen (D-NH) due to COVID-19, as well as a few other Democrats. FCC nominee Gigi Sohn [Senior Fellow and Public Advocate at the Benton Institute for Broadband & Society] and FTC nominee Alvaro Bedoya are key to Democratic majorities at both agencies, and their confirmations would allow Biden’s FCC and FTC chiefs to pursue their long-deferred progressive agendas. But every Democratic vote may be needed to overcome GOP pushback. “It’s all about who shows up,” Cantwell said.

#### Or it’s inevitable.

Cobun Zweifel-Keegan 4/1, Managing Director of IAPP,graduate of the University of Colorado School of Law where he served as Executive Editor of the Colorado Technology Law Journal. "Heard around DC – Roundup and reflections for April 1, 2022" <https://iapp.org/news/a/heard-around-dc-roundup-reflections-for-april-1-2022/>

FTC nominee one step closer to confirmation. On March 30, Alvaro Bedoya’s longstanding nomination to serve as a Commissioner of the Federal Trade Commission was discharged from committee via a roll-call vote of the entire Senate. This parliamentary peculiarity (usually the committee would vote to recommend the nominee) was brought about by a special rule to handle contentious nominations under the current 50/50 political split. What’s next? Two more floor votes. One to stop debate and another to confirm the nominee. Based on the rules for timing these votes, Bedoya’s final approval cannot happen before April 5 and will likely be later.

#### No link---they haven’t read evidence the plan halts confirmation.

#### Biden will just recess appoint him

David Dayen 2-22, executive editor of The American Prospect, 2/22/22, “The Wilson Phillips Blockade and Republican Obstruction,” https://prospect.org/politics/wilson-phillips-blockade-and-republican-obstruction/

But while a handful of Republicans support the study, it was the two Republican commissioners, Wilson Phillips, who blocked it. And it’s Republican senators who are holding Bedoya’s nomination hostage to prevent a majority that would likely favor an investigation into PBMs. Republican obstruction, in fact, could prevent any Biden nominees from taking their seats in the indefinite term, disrupting Lina Khan’s efforts to reinvigorate the FTC, along with hobbling agencies across the government.

Senate Democrats could do something about that last bit by changing the Senate rules, or enabling President Biden to recess-appoint Bedoya and others. Until or unless that happens, Republicans will likely continue down this path to grind down government and protect their favored corporations from scrutiny and the public’s need for a fairer economy.

#### They’re divided---antitrust now.

Ben Lovejoy 03-29. British technology writer. “US antitrust bill targeting Apple and others gets endorsement from Department of Justice” 9to5 Mac.03-29-22. https://9to5mac.com/2022/03/29/us-antitrust-bill-endorsed-by-doj/

The US **antitrust bill**, the American Innovation and Choice Online Act, has been **endorsed by the Department of Justice.**

The bill was introduced after a report stating that a number of tech companies – including Apple – were guilty of engaging in “deeply disturbing” anticompetitive behavior …

Background

We previously outlined the run-up to the act.

2019 saw the start of a year-long investigation into whether tech giants were guilty of anti-competitive behavior. Apple was one of the companies investigated, with Tim Cook required to testify before Congress – and was among the tech companies found to engage in “deeply disturbing” anticompetitive behavior.

Congress was initially expected to try to pass a single antitrust bill to tackle all of the issues identified, but instead for multiple bills. We’re **currently up to six of these**, one of which had been described as putting the entire Apple ecosystem at risk.

If passed into law, it would impact Apple’s treatment of apps like Spotify, but some have suggested it could even bar the company from pre-installing its own apps on iPhones.

The American Innovation and Choice Online Act has **made the most progress.** Apple CEO Tim Cook personally lobbied against the bill, but his concerns were dismissed by co-sponsor Senator Amy Klobuchar. The bill had **bipartisan support in the Senate Judiciary Committee**, but it faces opposition from some in both houses.

#### Not intrinsic---confirm Bedoya and do the plan.

#### Bedoya doesn’t solve migration---can’t alter visas or undocumented policy.

### AT: Migration---2AC

#### Past century of surveillance proves they don’t access a terminal impact.

#### China and Russia aren’t emboldened---Trump immigration policy thumps.

#### Biden actions thump.

Nicolás Rivero 3-29. Tech reporter. “Biden proposed a big funding increase for US antitrust enforcers” Quartz. 03-29-2022. https://qz.com/2147910/biden-proposed-a-big-funding-increase-for-us-antitrust-enforcers/

US president Joe Biden wants to give American antitrust enforcers an **extra $227 million to crack down on monopolies** this year. Biden included the request—which represents a **44% jump in funding** for the Federal Trade Commission (FTC) and the Department of Justice (DOJ)’s antitrust division—in the proposed budget (pdf) he sent to Congress on March 28.

Biden has **vowed to restore competition** to the American economy. He appointed **Lina Khan**, a prominent **Amazon critic**, as head of the FTC, and staffed the White House with a **new school of antitrust crusaders** that believes in taking a harder line against big companies. He issued an **executive order** on July 9 directing federal agencies to set rules designed to lower prices and boost competition among powerful companies in sectors ranging from agriculture to pharmaceuticals to tech, remarking that “capitalism without competition isn’t capitalism; it’s exploitation.”

Now, **the White House wants to fund its antitrust ambitions** with what it calls “**historic** **increases**” in the budgets of the two biggest monopoly-busting agencies in the US government, doling out an extra $139 million to the FTC and $88 million to the DOJ antitrust division. Congress, however, will craft its own budget—and lawmakers don’t always pay much attention to White House budget proposals, which are often seen as wishlists that signal a president’s policy priorities.

#### Biden brings antitrust change.

Tara L. Reinhart and David P. Wales 22. Both Partner, Antitrust/Competition. “Biden’s Broad Mandate Has Altered the Antitrust Landscape, Making Merger Clearance Process Less Predictable” Skadden. 01-19-22. https://www.skadden.com/insights/publications/2022/01/2022-insights/regulation-enforcement-and-investigations/bidens-broad-mandate-has-altered-the-antitrust-landscape

The Biden administration has demonstrated a **clear pro-enforcement approach to antitrust**, implementing **numerous directives and changes**, driven in part by concerns about the power of Big Tech, and by progressives who **want antitrust enforcement** to further their social goals.

These efforts have **brought more uncertainty** in the short term as the antitrust agencies and the business community adjust. Whether 2022 brings more dramatic, rather than incremental, changes will depend on whether Congress revises the antitrust laws and if the agencies successfully challenge deals and conduct in court.

Key Players

The main faces of antitrust enforcement in the Biden administration are vocal progressives, and in 2022 we expect to see them push for **changes in policy, practice and the law**:

Timothy Wu, special assistant to the president for technology and competition policy, coined the term “net neutrality” and advocates reigning in dominant telecom firms and online platforms.

Lina Khan, before her appointment as chair of the Federal Trade Commission, was best known for a 2017 law review article advocating a new antitrust framework to address market power in the digital age and using antitrust law to protect social interests, such as to prevent layoffs or stagnation of wages.

Jonathan Kanter, assistant attorney general overseeing the Department of Justice (DOJ) Antitrust Division, comes from private practice, where he was a vocal critic of Big Tech and pursued, on behalf of clients, Google and other tech firms for antitrust violations.

**The Administration’s ‘Whole-of-Government’ Approach to Antitrust**

In a July 2021 executive order, President Joe Biden articulated the administration’s broad antitrust policy. That order instructed the antitrust agencies to increase enforcement to prevent a rise in consumer prices and competitive harm in labor markets, and preserve nascent competition. Additionally, in what the order calls a “whole-of-government competition policy,” it charged more than a dozen other agencies to protect competition using their authority under a range of statutes.

This approach allows the administration to **challenge conduct it deems anticompetitive** or unfair **without having to resort to suits under the antitrust statutes**. For example, in a town hall meeting in December 2021, Mr. Wu criticized distribution practices that allegedly favor large alcohol suppliers over small ones and called on the U.S. Department of the Treasury’s Alcohol and Tobacco Tax and Trade Bureau to address them through rulemaking or regulation.

# 1AR

### Say No

#### Say no---AND links to the net benefit---proves only the permutation can solve.

#### Democrats will argue that unions enable workers to compete for higher wages! Obviously, this isn’t something they would let expire given Biden’s pro-Union agenda. All of their evidence is from 2005 or generic about how about how some exemptions could expire, NONE as massive as the union exemption.

#### Sunsets are contentious, political tools---turns the net benefit.

Brian Baugus and Feler Bose 15. \*Brian Baugus is an assistant professor of economics at Regent University. \*Feler Bose is an associate professor of economics. “Sunsetting Government Waste” US News & World Report. 09-01-15. https://www.usnews.com/opinion/economic-intelligence/2015/09/01/sunset-clauses-leads-to-political-power-plays-but-some-good-government

**The sunset review process is about power.** Eighty percent of state legislatures are part time and the governor and the agencies are full time, which has numerous advantages to the governor and agencies. Being full time gives the governor knowledge advantages as well as the advantage that comes with being there while the legislature is not in session. Governors influence the agencies towards their policy preferences. However, the legislatures want their **own ends from these agencies**. The legislatures want their constituents served, they want favors and they want influence over these agencies. Since these legislators are part time, one way to keep the agencies from drifting towards the governor is by threatening to shut them down.

Every few years the agency has to appear before the legislature and justify its continued existence, and there is no better way to do that than to be able to tell the legislators what the agency has **done for them lately**. And, even in the years an agency is not under review, that sunset is always **hanging out there as a political stick**. Every once in a while the legislature lets an agency sunset, to **make the threat more credible.**

The sunset review process looks like good government – and some evidence suggests there is an aspect of it that is – but the bigger game is that it's a tool the legislature uses to keep the agencies in line and from becoming too tied to the governor's agenda. Sunset review is a **pawn in a bigger power game** that has the potential to produce some good government side effects.

#### Their evidence is bad---McGinnis just describes the process, but it requires debates on whether there is a pro-competitive benefit. The second card---it’s not about the US! Refers to the “Minister of Transportation.”

### AT: PDCP

#### Perm do the CP

#### 1. It not severance because we’ll win the termination and prohibition of the plan is not final or mandatory!

#### 2. Termination and Scope---the counterplan does alter the scope of anti-trust after the termination which means it’s only a question of the immediacy debate.

#### 3. Prohibitions

#### 4. Increase---extend the evidence from offsets---there’s no definitive or limiting definition of increase that would mean it’s final or certain.

#### 5. Resolved isn’t certain.

Merriam-Webster 9. Merriam Webster 2009. http://www.merriam-webster.com/dictionary/resolved

# Main Entry: 1re·solve # Pronunciation: \ri-ˈzälv, -ˈzȯlv also -ˈzäv or -ˈzȯv\ # Function: verb # Inflected Form(s): re·solved; re·solv·ing 1 : to become separated into component parts; also : to become reduced by dissolving or analysis 2 : to form a resolution : determine 3 : consult, deliberate

#### Resolved isn’t immediate.

PTE 9. Online Plain Text English Dictionary 2009. http://www.onelook.com/?other=web1913&w=Resolve

Resolve: “To form a purpose; to make a decision; especially, to determine after reflection; as, to resolve on a better course of life.”

#### 6. Should isn’t certain.

Black’s Law Dictionary 79. Black’s Law Dictionary, Fifth Edition, p. 1237.

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from “ought.” It is not normally synonymous with “may,” and although often interchangeable with the word “would,” it does not ordinarily express certainty as “will” sometimes does.

#### Should isn’t immediate.

Dictionary.com 10. “Definition: Should”. http://dictionary.reference.com/browse/should

should /ʃʊd/ Show Spelled[shood] Show IPA –auxiliary verb 1. pt. of shall. 2. (used to express condition): Were he to arrive, I should be pleased. 3. must; ought (used to indicate duty, propriety, or expediency): You should not do that. 4. would (used to make a statement less direct or blunt): I should think you would apologize. Use should in a Sentence See images of should Search should on the Web Origin: ME sholde, OE sc ( e ) olde; see shall –Can be confused:  could, should, would (see usage note at this entry ). –Synonyms 3. See must1 . –Usage note Rules similar to those for choosing between shall and will have long been advanced for should and would, but again the rules have had little effect on usage. In most constructions, would is the auxiliary chosen regardless of the person of the subject: If our allies would support the move, we would abandon any claim to sovereignty. You would be surprised at the complexity of the directions. Because the main function of should in modern American English is to express duty, necessity, etc. ( You should get your flu shot before winter comes ), its use for other purposes, as to form a subjunctive, can produce ambiguity, at least initially: I should get my flu shot if I were you. Furthermore, should seems an affectation to many Americans when used in certain constructions quite common in British English: Had I been informed, I should (American would ) have called immediately. I should (American would ) really prefer a different arrangement. As with shall and will, most educated native speakers of American English do not follow the textbook rule in making a choice between should and would. See also shall. Shall –auxiliary verb, present singular 1st person shall, 2nd shall or ( Archaic ) shalt, 3rd shall, present plural shall; past singular 1st person should, 2nd should or ( Archaic ) shouldst or should·est, 3rd should, past plural should; imperative, infinitive, and participles lacking. 1. plan to, *intend* to, or expect to: I shall go later.

#### 7. Substantial

#### Substantially means uncertain and controls the words around it.

Bryan Garner 11. 2011. Editor in Chief of all current editions of Black's Law Dictionary. A Dictionary of Modern Legal Usage. p. 926.

WEASEL Words. Theodore Roosevelt said, in a speech in St. Louis, May 31. 1916: 'One of our defects as a nation is a tendency to use what have been called weasel words. When a weasel sucks eggs it sucks the meat out of the egg and leaves it an empty shell. If you use a weasel word after another there is nothing left of the other." Some writers have incorrectly assumed that the metaphor suggested itself because of the wriggling. evasive character of the weasel. In any event, sensitive writers are aware of how supposed intensives (for example very. q.v.) actually have the effect of weakening a statement. Many other words merely have the effect of rendering uncertain or toothless the statements in which they appear. Among these are significantly, substantially, reasonable. meaningful, compelling, undue, clearly, obviously, manifestly, if practicable. with all deliberate speed (orig. a weasel phrase. now with a history), all reasonable means, or as soon the neaï¬‚er as may be. rather. somewhat. duly. vir- tually, and quite. Sec clearly. Cf. I-'UDGI-: worms.

#### 8. Not best for ground for the affirmative

#### 9. Doesn’t collapse into durable fiat

## Bedoya

### No Confirmation---1AR

#### Conceding Bedoya won’t confirmed takes out the other disad---means Republicans will cause massive fights with Democrats over the core of the FTC which takes out link uniqueness.

## Sohn

### Top Level

#### No terminal impact---conceded impact defense for disease and environmental crisis on another flow which takes out their terminal offense here---every alt cause conceded on Trust also applies.

#### Internet isn’t falling.

### Uniqueness

#### Nomination is deadlocked---our evidence is far more recent.

#### 1. Wong states that Sohn’s positions on rural states complicate the vote and their IR evidence says she’s barely squeaking by because they CAN’tT

#### 2. Won’t be confirmed---missing votes.

Brendan Bordelon 3-23. "President Biden's FTC and FCC nominees face further confirmation delays". Benton Foundation. 3-23-2022. https://www.benton.org/headlines/president-bidens-ftc-and-fcc-nominees-face-further-confirmation-delays

Senate Democrats likely won’t be setting up floor votes this week on President Biden’s long-pending Federal Trade Commission and Federal Communications Commission nominees, according to Senate Commerce Chair Maria Cantwell (D-WA). “We’re missing a few people,” she said, citing the absence of Sen Jeanne Shaheen (D-NH) due to COVID-19, as well as a few other Democrats. FCC nominee Gigi Sohn [Senior Fellow and Public Advocate at the Benton Institute for Broadband & Society] and FTC nominee Alvaro Bedoya are key to Democratic majorities at both agencies, and their confirmations would allow Biden’s FCC and FTC chiefs to pursue their long-deferred progressive agendas. But every Democratic vote may be needed to overcome GOP pushback. “It’s all about who shows up,” Cantwell said.

#### 3. It's further delayed.

Timothy Karr 3-31. "Further Delays Leave United States at 435 Days and Counting Without Fully Functioning FCC and FTC". Free Press. 3-31-2022. https://www.freepress.net/news/press-releases/delays-leave-united-states-435-days-and-counting-without-full-fcc-ftc

WASHINGTON — On Wednesday, the full Senate voted 51–50 to discharge from the Commerce Committee the nomination of Alvaro Bedoya to the Federal Trade Commission. This is an important procedural step necessitated by the 14–14, party-line tie vote on his nomination at the Committee stage. But there has been no announcement regarding a similar discharge vote for Gigi Sohn’s nomination to be the fifth and tie-breaking vote at the Federal Communications Commission, as Bedoya will be at the FTC. Press reports earlier this week suggested that Sohn’s discharge vote could also occur before the Senate leaves for recess on April 9. But those same reports indicated that the Senate may delay the final confirmation votes for Sohn and Bedoya until that recess concludes at the end of April. Free Press Action Co-CEO Craig Aaron said: “It’s now been 435 days since President Biden was sworn in. The Senate has a number of crucial tasks in front of it, including confirming a stellar and historic Supreme Court nominee. And Senate Republicans and industry lobbyists have blatantly blocked progress for these exceptional FCC and FTC picks. But we can’t pin the blame entirely on Republicans. The failure of some Senate Democrats to see through these tactics and expediently confirm Sohn and Bedoya is undermining these agencies’ ability to close the digital divide, rein in Big Tech, and fulfill many other priorities that Senate Democrats espouse.

#### 4. She’s been subject to intense scrutiny---from Conservatives and industry lobbyists who like the plan.

Ted Johnson 22. Political Editor. “FCC Nominee Gigi Sohn Pushes Back At “Unrelenting, Unfair And Outright False Criticism” In Senate Hearing — Update” https://deadline.com/2022/02/gigi-sohn-fcc-joe-biden-senate-commerce-committee-1234929763/

UPDATED, with info on Fox News segment: **Gigi Sohn**, Joe Biden’s choice to fill a fifth slot on the FCC, told a Senate committee on Wednesday that she has been subject to “unrelenting, unfair, and outright false criticism and scrutiny,” as she’s been a **target of attacks from the right and industry lobbyists** raise issues that have **delayed her confirmation process.**

Sohn’s nomination is significant because her confirmation would give Democrats a 3-2 majority on the FCC, allowing it to move forward on contentious issues like net neutrality and media consolidation. Since last year, the commission has been split between the parties 2-2.

Under questioning before the Senate Commerce Committee, Sohn said that some companies have been “**opportunistic” in seizing on one issue**: whether she should recuse herself from matters that she has previously weighed in on as a public interest advocate, including her tenure as co-founder of the group Public Knowledge.

Sohn said, “I think there are certain very large companies that would like the FCC continue to be deadlocked. It’s no secret.”

Soon after Sohn was nominated in late October, it was clear that her confirmation process would be contentious. The Wall Street Journal editorialized against her and Fox News’ Tucker Carlson did a segment accusing her of trying to stifle free speech.

Yet her years as a public interest advocate, including as cofounder of Public Knowledge, she’s taken positions that at times put her at odds with major and telecom conglomerates and Hollywood studios. It’s also drawn the attention of the creative community: The Directors Guild of America opposes her nomination, the Writers Guild of America West supports it.

Sohn would be the first opening LGBTQ commissioner if confirmed, but there’s uncertainty as to when a vote would take place.

Wednesday’s hearing showed that **partisan lines have only hardened**, meaning that Democrats may need all of its members present to clear her nomination. That won’t happen until Sen. Ben Ray Lujan (D-NM) returns after suffering a stroke, and Sohn acknowledged that may push a confirmation vote off until **April or May or even later.**

Sohn previously **testified before the committee in December**, but was called to a second hearing as Republicans raised issues about her involvement in Locast. The non-profit service provided streams of broadcast signals, but suspended operations after broadcast networks sued for copyright infringement and a federal judge ruled in their favor.

#### 5. KBJ thumps.

IR 3-31 – Inside Radio, “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo”, 3/31/2022, https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html

Five months after President Biden nominated Gigi Sohn to fill an open Democratic seat on the Federal Communications Commission, she is still on the sidelines and the FCC remains with a two-two deadlock along party lines. If and when her nomination advances will not only come down to whether Senate Democrats all support her, but also attendance in the chamber.

Sohn’s nomination vote in the Senate Commerce Committee tied 14-14 earlier this month. That means it will require a motion to discharge from the Majority Leader in order to be placed on the Senate calendar. But in order for that to pass, all 50 Democrats will need to be present to overcome what is expected to be universal opposition among Republican lawmakers. Vice President Kamala Harris would then break the tie in the evenly split Senate. Supporters of Sohn’s nomination are hoping that the two-step process – a vote on her confirmation would follow the discharge – could come within the next week or two.

One D.C. lobbyist told Inside Radio they believe that at the end of the day, Sohn will squeak by and be confirmed this spring. The only issue, they said, is whether the Senate will find the time before diving into the debate and vote for Supreme Court nominee Ketanji Brown Jackson. That is looking less likely. The latest indicators suggest a Sohn vote will not happen until the end of April.

But GOP members are hoping to peel off a Democrat, arguing Sohn’s positions on broadband net neutrality would be bad for rural states. They also argue that her past work with the now-closed television streaming service Locast should disqualify her from consideration. Sohn has agreed to recuse herself temporarily from matters involving retransmission consent or television broadcast copyright for the first three years of her term in order to address those concerns.

“Why on Earth should we choose a commissioner who would have to recuse herself from participating in substantial parts of the FCC's work? How does it serve Americans to have an FCC Commissioner who can't fully do her job,” said Senator John Thune (R-SD). “Surely, there are other qualified nominees who don't have Ms. Sohn's conflict of interest,” he said in a speech on the Senate floor earlier this month.

An indication of whether Sohn will advance may come from a vote on Alvaro Bedoya, a Democrat nominated for a post on the Federal Trade Commission. His nomination also failed to clear the Senate Commerce Committee with a 14-14 split, meaning Democrats will need to go through a similar two-vote process in order to confirm him. That could happen in the next few days according to some Washington insiders.

Some outside groups are hoping to put pressure on the Senate to act on Sohn’s nomination before its April recess. The left-leaning Media and Democracy Project is running a social media campaign complaining it has been more than a year since there was a “fully functioning” FCC and urging people to call their lawmaker. It calls Sohn an “impeccably qualified” nominee. “She represents a tie-breaking fifth vote at an FCC that must create a more just, equitable and diverse media system,” it says. The group also accuses media companies of “trying to undermine” her nomination.

But such a claim may not get far after the National Association of Broadcasters – which initially said it had “serious concerns” that the ethics agreement submitted by Sohn would not do enough to separate her from what it called a “clear and troubling” conflict of interest – has since reversed course. It got behind Sohn’s nomination in January after she agreed to recuse herself temporarily from a pair of broadcast regulatory issues that are critical to local TV station revenue.

If she is confirmed, Sohn would give the Democrats a third vote on the Commission and break its current 2-2 deadlock. It would also allow FCC Chair Jessica Rosenworcel to take on several more controversial items that an evenly split FCC would not approve.

#### 6. Other priorities. Emory = yellow.

Linda Hardesty 3-17, Editor-in-Chief at Fierce, BA in Journalism from the Metropolitan State University of Denver, BS in Economics from the Missouri University of Science and Technology, “Senate May Soon Vote on Gigi Sohn Nomination to FCC”, Fierce Wireless, 3/17/2022, https://www.fiercewireless.com/wireless/senate-may-soon-vote-gigi-sohn-nomination-fcc

Since then, the Senate Commerce Committee voted to advance the nomination of Sohn, which now goes to the Senate. “We expect her to be approved, albeit by a slim margin,” wrote New Street Research policy analyst Blair Levin. But he said the situation in Ukraine and the Supreme Court nomination are both requiring Senate time, and those will be higher priorities for the Senate and the White House.

### No Link---1AR

#### There’s no industry backlash or lobbying---Sokol evidence is from 2009, Mayeux evidence is about backlash during local elections, Roberti is descriptive of the status quo not a predictive link card. the plan is the only chance the GOP gets on board. Their link argument is that the GOP hates anti-trust because it harms business and industry, but the plan is in the opposite direction. That’s proven by all the evidence on business confidence and elementary knowledge on domestic politics.

#### Empirically proven!

Ian Kullgren 22. Bloomberg Law. “Biden in Race Against Time, GOP to Overhaul Labor Law for Unions.” https://news.bloomberglaw.com/daily-labor-report/biden-in-race-against-time-gop-to-overhaul-labor-law-for-unions

Congressional gridlock hasn’t helped, but unions watch in frustration as Republicans and a few Democrats, backed by the Senate filibuster, deny Biden the kind of legislative victory that former President Franklin Delano Roosevelt won in his first term, when the National Labor Relations Act, which guarantees every private-sector worker the right to collectively bargain, was signed into law.

The ‘Centerpiece’

Biden still has abundant support from unions and their allies, who say he’s already shown them more support than former Democratic presidents Barack Obama and Bill Clinton ever did. But Biden’s record with unions may rest on whether he can win over a handful of Democratic senators who are blocking changes to the 60-vote requirement to advance legislation in the Senate, thereby preventing the Protecting the Right to Organize Act (H.R. 842), the biggest piece of pro-union legislation in a century, from becoming law.

#### Their uniqueness evidence states the issue is universal opposition by Republicans and cites alt causes like conflict of interest conflicts.

IR 3-31 – Inside Radio, “FCC Remains Deadlocked With Gigi Sohn’s Nomination Still In Limbo”, 3/31/2022, https://www.insideradio.com/free/fcc-remains-deadlocked-with-gigi-sohn-s-nomination-still-in-limbo/article\_1b20d2e8-b0c4-11ec-b326-f36bfc96102c.html

Five months after President Biden nominated Gigi Sohn to fill an open Democratic seat on the Federal Communications Commission, she is still on the sidelines and the FCC remains with a two-two deadlock along party lines. If and when her nomination advances will not only come down to whether Senate Democrats all support her, but also attendance in the chamber.

Sohn’s nomination vote in the Senate Commerce Committee tied 14-14 earlier this month. That means it will require a motion to discharge from the Majority Leader in order to be placed on the Senate calendar. But in order for that to pass, all 50 Democrats will need to be present to overcome what is expected to be universal opposition among Republican lawmakers. Vice President Kamala Harris would then break the tie in the evenly split Senate. Supporters of Sohn’s nomination are hoping that the two-step process – a vote on her confirmation would follow the discharge – could come within the next week or two.

One D.C. lobbyist told Inside Radio they believe that at the end of the day, Sohn will squeak by and be confirmed this spring. The only issue, they said, is whether the Senate will find the time before diving into the debate and vote for Supreme Court nominee Ketanji Brown Jackson. That is looking less likely. The latest indicators suggest a Sohn vote will not happen until the end of April.

But GOP members are hoping to peel off a Democrat, arguing Sohn’s positions on broadband net neutrality would be bad for rural states. They also argue that her past work with the now-closed television streaming service Locast should disqualify her from consideration. Sohn has agreed to recuse herself temporarily from matters involving retransmission consent or television broadcast copyright for the first three years of her term in order to address those concerns.

“Why on Earth should we choose a commissioner who would have to recuse herself from participating in substantial parts of the FCC's work? How does it serve Americans to have an FCC Commissioner who can't fully do her job,” said Senator John Thune (R-SD). “Surely, there are other qualified nominees who don't have Ms. Sohn's conflict of interest,” he said in a speech on the Senate floor earlier this month.

An indication of whether Sohn will advance may come from a vote on Alvaro Bedoya, a Democrat nominated for a post on the Federal Trade Commission. His nomination also failed to clear the Senate Commerce Committee with a 14-14 split, meaning Democrats will need to go through a similar two-vote process in order to confirm him. That could happen in the next few days according to some Washington insiders.

Some outside groups are hoping to put pressure on the Senate to act on Sohn’s nomination before its April recess. The left-leaning Media and Democracy Project is running a social media campaign complaining it has been more than a year since there was a “fully functioning” FCC and urging people to call their lawmaker. It calls Sohn an “impeccably qualified” nominee. “She represents a tie-breaking fifth vote at an FCC that must create a more just, equitable and diverse media system,” it says. The group also accuses media companies of “trying to undermine” her nomination.

But such a claim may not get far after the National Association of Broadcasters – which initially said it had “serious concerns” that the ethics agreement submitted by Sohn would not do enough to separate her from what it called a “clear and troubling” conflict of interest – has since reversed course. It got behind Sohn’s nomination in January after she agreed to recuse herself temporarily from a pair of broadcast regulatory issues that are critical to local TV station revenue.

### AT: Net Neutrality

#### Doesn’t solve net neutrality.

#### Regulatory swings on net neutrality are worse

Jennifer Huddleston 21. "The Problematic Potential Return of Net Neutrality". AAF. 5-4-2021. https://www.americanactionforum.org/insight/the-problematic-potential-return-of-net-neutrality/

The Problems of Continued Regulatory Pendulum Swings

The constant cycle of regulatory changes regarding net neutrality also has its risks for innovation and investment. Not knowing how various elements of the internet will be regulated from administration to administration could discourage expansion or investment. A better route than ever-changing FCC interpretations would be congressional action to clarify the regulatory status of the internet and the appropriate authorities involved. Ideally this clarification would avoid a reclassification under Title II and its associated problems, but it should provide greater clarity around the authority of the FCC or FTC to address this recurring policy debate. Such an approach would provide better regulatory certainty for innovators and clearer guidance for regulators. Congressional action could also address issues associated with a potentially emerging patchwork of state laws that could disrupt the internet by providing clear preemption directing that many internet issues are to be decided as a federal matter. Yet if Congress acts on the matter, it should avoid many of the burdensome elements that a renewed Title II classification could bring with it and instead seek to create a solution that provides clarity around appropriate regulatory authority and certainty for innovators and investors.

#### Bill is not key.

Wolfgang Kleinwächter 21, International Communication Policy and Regulation in the Department for Media and Information Studies at the University of Aarhus, 1/8/21, “Internet Governance Outlook 2021: Digital Cacaphony in a Splintering Cyberspace,” https://circleid.com/posts/20210108-internet-governance-outlook-2021-digital-cacaphony/

The EU is undoubtedly a supporter of a non-fragmented Internet. However, for years Europe has not felt comfortable being sandwiched between the two cyber superpowers, the USA and China. On the eve of 2021, Brussels is now on its way to give the global Internet a more European flavor. Ursula von der Leyen, the EU Commission president, wants to make the next ten years a “Europe’s Digital Decade.” In her “State of the Union Address” in September 2020, she said: “We need a common plan for digital Europe with clearly defined goals for 2030, such as connectivity, skills and digital public services. And we need to follow clear principles: the right to privacy and connectivity, freedom of speech, free flow of data, and cybersecurity. But Europe must now lead the way on digital—or it will have to follow the way of others, who are setting these standards for us. This is why we must move fast.” This is an ambitious plan, but von der Leyen and her chief of the “digital cabinet,” Margarete Vestager, are very serious about what they have called the “New Green and Digital Deal.”

Based on the positive experiences with the General Data Protection Regulation (GDPR), the EU presented in December 2020 drafts for a “Digital Service Act” (DAS) and a “Digital Market Act” (DMA) as well as a “Cybersecurity Strategy for the Digital Decade.” Combined with “White Papers” on AI and Data Management, this comprehensive digital package sends a clear message to the rest of the world: In cyberspace, Europe wants to be a “Norm-Maker,” not a “Norm-Taker.” The ambition goes from cybersecurity to platform regulation, from AI to IoT, from digital trade to digital taxation.

Making the 2020s a “European Digital Decade” is a big plan, and it remains to be seen how much material substance is behind the conceptual plans. The GAIA-X cloud project is an interesting start. But more has to come. Anyhow, the new coherence of a long-term European digital strategy signals a new European digital self-confidence. And the new “female tandem” at the top of EU’s digital policymaking understands obviously much better than all its forerunners the complexity of the challenges in an interconnected world. They know that in the age of cyber interdependence, one needs next to a strong “digital home” a fine-tuned and flexible double strategy for the international theater: A strong new transatlantic partnership with the US—based on common values—and a good relationship with China—based on common interests as well as an engagement in multilateral and multistakeholder organizations and a constructive outreach to the “rest of the world,” as the new EU-partnership with the African Union is signaling. According to von der Leyen, the European Union is “ready to compromise,” but not compromising on fundamental principles as democracy, the rule of law, and human rights.

Brussels sees itself at the eve of a new beginning if it comes to “digital”: As the EU president has said: “We cannot turn the clock back. And we cannot go back to the exact same agenda we had five years ago. We should not fall into that trap. We need a fresh approach. Because the world has changed, and so has the United States, and so has Europe.” And this is true also for China. “The EU-China relations are of real strategic importance to both sides and to the world. But this relationship is also one of our most challenging. You have heard me say many times, China is a negotiating partner, an economic competitor and a systemic rival. All at once.”

#### Can’t solve global

Wolfgang Kleinwächter 21, International Communication Policy and Regulation in the Department for Media and Information Studies at the University of Aarhus, 1/8/21, “Internet Governance Outlook 2021: Digital Cacaphony in a Splintering Cyberspace,” https://circleid.com/posts/20210108-internet-governance-outlook-2021-digital-cacaphony/

One thing is for sure: 2021 will probably see little global consensus. The digital cacophony will become louder. Driven by local needs, governments tend to prioritize the development of national policies. Although all sides recognize that national solutions need a functioning global information infrastructure in an interconnected world, the appetite to intensify mutual beneficial global cooperation, compromise, and find consensus is very low.

On the other hand, there is a more or less a silent agreement that the protection of the public core of the Internet—that is, the functioning of the global mechanisms for the management of root servers, domain names and IP addresses—is in the interest of all sides. It seems that some Internet Governance battles of the past are over. ICANN is not anymore in the line of geo-political fire. Its technical service is needed by everybody.

What ICANN is doing is called now by ICANNs CEO & President Göran Marby “Technical Internet Governance” (TIG). ICANN is afraid to get pulled into a new round of political arm-twisting. Marby’s more neutral “TIG language” goes back to the Internet Governance definition and the consensus of the WSIS Tunis Agenda from 2005, which differentiated between the “development” and the “use” of the Internet. The political Internet Governance problems, which emerged in the last 15 years, are more related to the “use” of the Internet, less to its “development.” And the pandemic has shown that regardless of the different national Corona approaches, the seamless and silent functioning of the Internet was a great gift for everybody to reduce the damage that came with Covid-19.

Insofar, we can see an interesting contradiction: On the lower layer—the “development” or “TIG”-Layer—the Internet remains unfragmented. On the upper layer—the “use” or “IG”-Layer—a special variant of Internet fragmentation, now labeled as “Internet Bifurcation,” is growing. Nevertheless, there are interlinkages between the two layers. Technical issues do have political implications and political problems have a technical component. It will be interesting to watch how the interplay between technology and policy will evolve in the years to come. In any case, 2021 will be a year where the digital cards on the cybertable will be reshuffled

### Anti-Trust Now---1AR

#### The plan is especially key in the face of endless new anti-trust policies that mess with the chances of confirmation.

#### 1. The American Innovation and Choice Online Act is being passed---that’s Lovejoy

#### 2. Massive funding increases coming that prove the nomination is political.

Rebecca Klar 3-29. Staff writer at the Hill. "Biden administration boosts support for antitrust efforts." Hill. 3-29-2022. https://thehill.com/policy/technology/600270-biden-administration-boosts-support-for-antitrust-efforts/

The Biden administration is throwing its weight behind efforts to boost antitrust enforcement as federal agencies take on the market power of tech giants.

President Biden’s $5.8 trillion budget proposal requests $227 million in increased funding for the Federal Trade Commission (FTC) and the Department of Justice (DOJ) combined — a bump advocates and agency leaders say is needed to tackle cases against the nation’s wealthiest companies.

In addition to the request for increased funding, the DOJ sent letters to top lawmakers on the House and Senate Judiciary committees endorsing a key antitrust bill, a move that some advocates said could sway lawmakers who are hesitant to back the seemingly stalled legislation.

“It’s very significant and it’s definitely a step in the right direction. I think the thing that’s been dogging any antitrust enforcement efforts, whether that’s at the FTC or the Department of Justice, for decades is really a lack of capacity,” Matt Kent, a competition policy advocate at Public Citizen told The Hill.

The DOJ and the FTC enforce antitrust laws, which means that they face dominant companies — not just in the tech industry — with access to some of the best legal representation and monetary resources in the nation.

resources.

#### 3. FTC fraud cases and rulemaking thump.

Beth Ewen 3/29/22. Senior editor of Franchise Times. “Attorneys Take Note as FTC Turns Focus to Franchising.” https://www.franchisetimes.com/issue-archive/2022/april/attorneys-take-note-as-ftc-turns-focus-to-franchising/article\_d01d58e2-aa20-11ec-943c-3fd85bf34ac6.html

Is the sleeping giant waking up? That’s what Federal Trade Commission watchers are discussing after the FTC sued failed franchise Burgerim for alleged fraud in February—the first such case in 15 years—and also launched a new fraud reporting tool called ReportFraud.FTC.gov.

“This action—our first under the Franchise Rule since 2007—reflects a renewed commitment across the agency to protecting franchisees from illegal practices. As part of this work, we’re making it easier for franchisees to report predatory practices to us,” tweeted Lina Khan, chair of the FTC since her appointment in June 2021.

Some Franchise Times Legal Eagles lawyers think it’s far too late, noting more than 1,500 Burgerim franchisees have lost their investment, the founder has reportedly fled the country and no assets are left. “It’s well past the time when it would have been an effective move,” said Lee Plave of Plave Koch.

He worked at the FTC in the early part of his caree

r, and says about the agency, “What’s the old line? An enigma wrapped in a riddle wrapped in a puzzle, something like that.”

During the Trump administration’s “de-regulation bent,” he said, “there was a concern that perhaps the FTC would be asked to kill off the Franchise Rule. Franchisors and franchisees and the IFA all successfully in effect petitioned to not let that occur.”

Susan Grueneberg of Cozen O’Connor believes the new complaint line specifically for franchises “does signal perhaps a more activist approach. We were all kind of reading the tea leaves last year, when Lina Khan came on, and she mentioned franchising in one line of a letter.”

She’s also watching a new ANPR, or advance notice of proposed rule-making, regarding earnings claims, not just in franchising but in a wide variety of industries. “It would be a whole new kind of undertaking, regulation, for the FTC,” she said, but don’t expect any action soon—the process at the FTC is loooonnnnnng.