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### Plan---1AC

#### Plan: The United States federal government should increase prohibitions on private sector anticompetitive business practices that increase concentration in labor markets.

### Inequality---1AC

#### Advantage 1 is Inequality.

#### Increased concentration of buyer power in labor markets drives inequality---only antitrust can address the supply and demand side of wage suppression.

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A détente is especially desirable today in light of the severe stagnation in American wages. In the past thirty-five years, U.S. gross domestic product has all in all grown but the purchasing power of the average worker has barely changed.3 Labor’s share of national income declined precipitously in the 2000s, and in the five years after the Great Recession it was lower than at any point since World War II.4 Because most people get most of their income from labor, and because those who get most of their income from capital tend to be wealthy, this income shift has dramatic consequences for inequality.

Economists and policymakers have advanced numerous explanations for this troubling trend ranging from the decline of unions, to tighter monetary policy, to increased trade liberalization, and more.5 One explanation that has received attention in recent years is an apparent epidemic of market concentration and flagging competition.6 A growing body of evidence suggests that over time fewer and fewer firms have come to dominate sectors across the economy.7 One study found that from 1982 to 2012, the share of sales by the sectors’ top four firms increased in manufacturing, finance, services, utilities, retail trade, and wholesale trade.8 Average markups above cost—a manifestation of market power—rose from eighteen percent in 1980 to sixty-seven percent in 2014.9 This increase in concentration is due, in part, to a growing wave of mergers. By one count over 325,000 mergers have been announced since 1985.10 That year, around 2,000 mergers with a value of a little over $300 billion were announced.11 In 2018, 15,000 mergers occurred—valued at just under two trillion dollars.12

The ability of firms to charge prices for their products or services that exceed the competitive level harms workers in their role as consumers, and the reverberating inefficiencies have consequences for wages as well.13 Workers are harmed more directly, though by firms with buyer power in labor markets. Instead of enabling firms to charge high prices for the goods or services they sell, buyer power—also known as monopsony power—allows firms to push wages below the level workers would receive in competitive labor markets.

A recent study applied the Herfindahl-Hirschman Index (HHI), which is used to measure market concentration. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (“the agencies”) used HHI in merger review, and found that at least forty percent of job markets fell into the “highly concentrated” category, making them especially susceptible to anticompetitive behavior by employers.14 The hiring markets for the twenty-five percent most concentrated occupations in almost every commuting zone in the country have concentration levels nearly tripled the “highly concentrated” threshold.15 In commuting zones across middle America, the hiring market for nearly every occupation is highly concentrated.16 As discussed below, a concentrated labor market generally increases the buyer power of participants in that market. Recent research on labor supply elasticity, which is an indicator of vulnerability to employers’ market power, further challenges traditional assumptions of competitiveness in labor markets.17

Historically, antitrust enforcers have given far less attention to firms’ power as buyers than as sellers and have been particularly hesitant to check their power as buyers of labor. However, the tide may be beginning to change. Federal and state enforcers have begun to challenge anticompetitive labor contracts,18 and there is a small but growing body of precedent addressing increased buyer power in mergers.19 In 2016, the Obama Administration’s Council of Economic Advisors issued a report describing the problem of labor market power and encouraging greater attention to the issue by the antitrust enforcement agencies.20 Separately, then-Acting Assistant Attorney General Renata Hesse stated that antitrust enforcement efforts should not only be concerned with the welfare of consumers, but should “also benefit workers, whose wages won’t be driven down by dominant employers with the power to dictate terms of employment.”21 Nevertheless, to date, the agencies have never blocked a merger on the basis of harm to workers.

There are many reasons that may account for the dearth of enforcement, including misunderstandings of the relationship between labor and antitrust laws, the momentum of precedent focused on seller-side harms, and the resistance of some to increased antitrust enforcement as a general matter.22 In addition to these practical and ideological impediments, mistaken intuitions about the economics of buyer power create obstacles for enforcement. At first glance it would seem that if firms use their buyer power to lower their costs, downstream customers are ultimately benefitted. Therefore, the consumer welfare standard, which underpins modern antitrust enforcement, would seem to counsel against intervention contrary to buyer power. In most cases, though, this intuition is simply wrong.23 More competitive labor markets are not just good for workers; they are good for consumers too.

Clarifying the relevant interests at stake is crucial as policy reforms begin in earnest, and there is reason to believe that such reforms are on the horizon. Several politicians have recently advocated for greater antitrust scrutiny of labor markets. For example, in 2017 Senator Amy Klobuchar introduced a bill that would require the enforcement agencies to pay greater attention to buyer power in merger review.24 Senator Elizabeth Warren—who seeks more interventionist antitrust policy on many fronts25—and Senator Cory Booker—who in 2017 sent a letter to the DOJ and FTC citing concern with the failure of the agencies to address labor market power—have also taken up the cause.26

Labor market issues are also garnering increased attention from antitrust scholars.27 In an article published in 2018, C. Scott Hemphill and Nancy Rose argued for more interventionist merger policy directed at various forms of buyer market power.28 The same year, Suresh Naidu, Eric Posner and Glen Weyl published Antitrust Remedies for Labor Market Power, a sweeping analysis of the myriad options available to enforcers to promote more competitive labor markets.29 This legal analysis has been spurred by a growing body of empirical work on buyer power in labor markets.30 An array of scholars concluded that labor market power is a problem and one that antitrust institutions should do more to address.

This paper similarly argues that buyer power—and specifically buyer power in labor markets—deserves greater antitrust scrutiny and, to that end, develops a framework for systematically evaluating labor market power in merger analysis. The enthusiasm of some progressive politicians for more interventionist antitrust policy has drawn skepticism from many antitrust practitioners and scholars who worry that reforms will unmoor antitrust policy from its foundational principles and turn antitrust enforcement over to political whims.31 At least with respect to labor market power, however, economic theory and empirical evidence support increased enforcement without any reform of the basic legal framework and without deviating from substantial consensus about the proper role for antitrust in the economy.

#### Antitrust is key---permissive guidelines enabled the rise in monopsonies, expanding a worker welfare standard to labor markets is key to wage equality.

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Of course, this is not the world in which we live. Even the corner grocery store knows it can raise its prices a little bit without losing all of its customers, which is what the standard competitive theory suggests. More and more, firms have demonstrated high and increasing levels of market power (Philippon 2019; Stiglitz 2019). At the same time, the bargaining power of workers has weakened.

It was never an equal match. An employer typically can find an alternative worker far more easily than a worker can find an alternative employer. This is especially so during slack periods in the labor market, or in places where there has been persistent unemployment. Leaving or losing a job is often greatly disruptive to workers and their families. There are mortgages to pay, children to feed, bills coming due. From the perspective of workers, jobs are not easily substitutable.

As the chapters in this volume make abundantly clear, this imbalance of market power has consequences. It enables firms to raise prices for goods and services—lowering the real incomes of workers. It enables firms to suppress wages of workers below what they would be in a competitive marketplace—contributing to the inequality crisis facing the country. This economic inequality gets translated into political inequality, especially in our money-driven politics, resulting in rules that evermore favor big corporations at the expense of workers. The growing political inequality, in turn, hampers economic performance, and ensures that most of the benefits of our anemic economic growth go to those at the very top (Stiglitz 2012).

In the middle of the 20th century, John K. Galbraith (1952) described an economy based on countervailing power—where labor institutions and government checked the power of large corporations and financial institutions. But policy choices over the past half century have upset this balance in ways that have weakened not only the workers, but also the economy and the country. This volume explores what has happened by concentrating on one understudied part of the problem: the labor market.

Explaining the Weakening of Workers’ Bargaining Power

Multiple factors have contributed to the weakening of workers’ bargaining position. This volume focuses specifically on the ways that employers have increased their market power over workers.

Employer Concentration

Permissive antitrust enforcement has promoted concentration across industries, reducing the number of employers—particularly those in rural areas (Stiglitz 2016).1 With few alternatives, workers must accept the low wages that large local employers offer. More precisely, limited competition by buyers—in this case, employers who buy labor services—gives rise to monopsony power.2 Any firm with monopsony power knows that if it hires more workers, it will drive up the wage. The marginal cost of hiring an additional worker is thus greater than the wage. The result is lower employment and lower wages than if there were a competitive labor market. The chapter by Marinescu in this volume forcefully documents the degree of monopsony in labor markets across the United States, especially in rural areas—areas where, not surprisingly, wages lag behind the rest of the country.

Collusion

Typically there is some, but limited, competition in the labor market, but it is competition that is insufficient to achieve anything approximating what would emerge in a truly competitive marketplace. But employers often do not like even this limited competition, because even some competition means that wages are higher than they would be with no competition. Thus, firms sometimes collude to not compete; and that collusion drives down wages. The incentives for firms to do this—if they can get away with it—are obvious: collusion has been a feature of capitalism from the start. As Adam Smith observed in The Wealth of Nations, “Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate. . . . Masters, too, sometimes enter into particular combinations to sink the wages of labour even below this rate. These are always conducted with the utmost silence and secrecy” (Smith 1776, book 1, chap. 8).

Even then, Smith had observed an asymmetry not only in bargaining power, but also in capitalists’ response to workers’ attempts to redress the balance. When workers combine their forces, “the masters . . . never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers, and journeymen” (Smith 1776, book 1, chap. 8). This stance, of course, was markedly different from capitalists’ own behavior—not only in labor markets, but elsewhere, too. As Smith put it in one of his most famous statements, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices” (book 1, chap. 10). This issue is central: to redress the natural imbalance of bargaining power, workers have to band together and engage in collective bargaining. Unions are critical. But it is precisely because unions have been somewhat successful in redressing the imbalance that employers have worked so hard to suppress them, as I comment later in this introduction.

Contracts

In multiple contexts, business enterprises have not been satisfied with the increased profits brought by greater market concentration and occasional collusion. Businesses have figured out how to sustain and amplify those profits by the clever design of contracts that are conceived to inhibit competition in the labor market. This is another method that enables them to drive down wages still further.3 The chapters by Evan Starr and Terri Gerstein (this volume) provide ample evidence of the harmful impact of the misuse of labor contracts, noting in particular that often-used ruses distort the true impact on workers. Noncompete agreements, by definition, reduce competition. There might be some justification for not allowing employees with knowledge of trade secrets to go to work for competitors, but that hardly applies to employees of fast-food chains.

Employers have also put into contracts provisions that weaken workers’ rights—and power—if a dispute arises. Inserting arbitration clauses into most contracts has moved dispute resolution out of the public domain— where it can be protected in the public interest, through transparency and basic standards—into private hands. This not only weakens workers’ position after a dispute arises, but also subtly changes the balance of power— making it easier for firms to take advantage of workers, knowing that their ability to get redress is so circumscribed. Making matters worse is a broader set of changes in legal frameworks that has hurt workers and consumers at the expense of corporations. For instance, the ability to bring class-action lawsuits, particularly in arbitration, has been greatly limited.

Asymmetric Information

The standard competitive theory assumes perfect information. Research over the past 50 years has explained how even a little information asymmetry can have a large impact. Employers have recognized this—they have figured out that such asymmetry can weaken workers’ position and lead to lower wages. They have responded by doing what they can to increase these asymmetries, sharing data with each other but insisting that workers keep their own compensation data confidential, and punishing employees who violate such confidentiality. The chapter by Harris in this volume describes the adverse effects of informational asymmetries, how firms have tried to increase these asymmetries, and what governments have done and can still do to promote transparency—and thus competition—in the labor market.

#### The plan solves inequality and wages.

Eric Posner 21. Professor at the University of Chicago Law School. “You Deserve a Bigger Paycheck. Here’s How You Might Get It.” https://www.nytimes.com/2021/09/23/opinion/antitrust-workers-employers.html

The spectacle of the antitrust challenge to Big Tech has been riveting. But a far more consequential transformation in antitrust law has largely escaped notice — the movement to use antitrust law to address wage suppression and inequality caused by the power of employers in labor markets.

Economic theory says that when a pool of workers has only one potential employer, or a small number of potential employers, those workers will be paid below-market wages. Without the credible threat to quit and work for a competitor, workers lack leverage that could allow them to secure a raise and better conditions. This situation is sometimes called monopsony, and it is similar to monopoly in the market for goods. When buyers have no choice among sellers, a monopolist can charge high prices; when workers have little choice among employers, the employer can “charge” low wages.

Monopolies result in sluggish economic growth as well as high prices because in order to raise prices, monopolists make fewer goods or provide less in services. Companies that use their market power to suppress wages do something similar: They hire fewer workers, and this leads to unemployment and low growth as well. And because employers push down wages by reducing employment, they supply fewer goods, causing higher prices to consumers even though labor costs are reduced. A business might have monopoly power (over goods it sells), monopsony power (over workers), both or neither. If a small town has one newspaper, the newspaper has both a monopoly over local news and a monopsony over journalists. If the town has a single automobile manufacturing plant, that business will have a monopsony over the relevant skilled workers but not a monopoly over cars, which are sold into a national market where there are competitors.

Economists have understood these things since Adam Smith, who famously called wage-fixing by employers “the natural state of things, which nobody ever hears of.” But economists did not take this risk very seriously until recently, instead usually assuming that employers compete vigorously for workers. As a result, though the logic for using antitrust law to address market power is the same for monopsony as it is for monopoly, the legal community did not embrace the possibility that antitrust law should be brought to bear against employers, except in unusual cases.

But in recent years, thanks to the remarkable work of a diverse group of mostly young economists, this conventional wisdom was shattered. Exploiting vast data sets of employment and wages that had become available, they discovered that concentrated labor markets — that is, with one or few employers — are ubiquitous. In one paper, José Azar, Ioana Marinescu, Marshall Steinbaum and Bledi Taska found that more than 60 percent of labor markets exceeded levels of concentration that are regarded as presumptive antitrust problems by the Department of Justice. Numerous papers have made similar findings.

In highly concentrated labor markets, wages fall — as economic theory would predict. For example, Elena Prager and Matt Schmitt examined hospital mergers and found that when hospitals expand through mergers and gain significant market power, the wage growth of employees declines. Notably, this decline affected skilled health care professionals like nurses — but not administrators and unskilled staff members like cafeteria workers, who could easily find jobs outside hospitals.

The work on labor market concentration has been supplemented by growing evidence that employers collude with one another and engage in other anticompetitive practices. Evan Starr and his co-authors have found that agreements not to compete — where employers block workers from moving to competitors — are extremely common (as many as nearly 40 percent of workers have been subject to one) and are associated with lower wages. Alan B. Krueger and Orley Ashenfelter found that nearly 60 percent of major brand-name franchises — companies like McDonald’s and Jiffy Lube — subjected franchise employees to no-poaching agreements, which prevented them, even within the same franchise system, from quitting one employer to join another.

As a result, many workers, especially in rural areas and small towns — areas subject to high unemployment and economic stagnation — are squeezed by employers and underpaid. For example, when farm equipment manufacturers merge, they close dealerships, and so a mechanic who used to be able to get a good job as several dealers competed for his work must accept a less-appealing job from the single place in the area or drop out of the labor market.

Antitrust law applies to “restraint of trade,” and courts agree that when employers enter cartels to suppress wages, they violate the law. Yet until a few years ago, there were hardly any antitrust cases against employers. The major exception was a 2010 case against Big Tech after Google, Apple and other companies agreed not to solicit one another’s software engineers. This was potentially criminal behavior, but the Justice Department slapped them on the wrist. (A subsequent lawsuit secured more than $400 million in damages for the workers.)

But it was the academic research, not the tech case, that finally woke the antitrust community from its torpor. In the past year, the Justice Department has brought several criminal indictments against employers for antitrust violations (the first ever). The Federal Trade Commission is pondering a rule to restrict noncompetes. State attorneys general brought cases against franchises and other employers that used no-poaching agreements and noncompetes. Congress is holding hearings next week on antitrust and the American worker. Private litigators have joined in as discoveries of abusive wage practices have piled up. For example, “Big Chicken” companies face lawsuits not only for fixing the prices of chicken but also for fixing the wages of their workers.

If the academic research on labor markets is correct, then millions of Americans are paid thousands or even tens of thousands of dollars less than they should be paid. Labor monopsony affects people at all income levels, but it is a particular problem for lower-income workers and people living in stagnant rural and semirural parts of the country. In his recent executive order on antitrust, President Biden became the first president to commit government resources to ensure that the antitrust laws are used to help workers. Let’s hope he follows through.

#### Worker welfare is key.

Suresh Naidu et al 18. \*Suresh Naidu is an Associate Professor of International and Public Affairs and Economics, Columbia University. \*\*Eric Posner is a Kirkland & Ellis Distinguished Service Professor of Law, University of Chicago Law School. \*\*\*E. Glen Weyl is a Principal Researcher, Microsoft Research New England and Visiting Senior Research Scholar, Yale University Department of Economics and Law School “**Antitrust Remedies for Labor Market Power**” University of Chicago Law School. 2018. <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13776&context=journal_articles>

Most of the principles naturally carry over, in suitably modified form, to the analysis of merger effects on labor markets, though a few subtle issues arise. Many of the same factors that could act as efficiencies on the product side are also efficiencies on the labor side. By analogy to the “consumer welfare” standard, we believe that **mergers that trigger scrutiny by reducing** **labor market competition** should be subject to a “**worker welfare” standard**.213 The fact that the merger might raise firm profits more than it harms workers **should not be sufficient to excuse the merger**. Instead, the merger would be permitted if the merger sufficiently increases worker productivity (workers’ marginal revenue product) in a way that will not fully be absorbed by lower prices or increased employer profits. Thus, harms from reduced competition are more than fully offset, and **therefore workers’ wages, benefits, or conditions will improve because of the merger.** This is not to say that mergers that harm workers should never be approved. The losses to workers could be offset by gains elsewhere in the economy. Indeed, the merger of two firms that operate in a frictionless labor market should not greatly harm workers even if it does result in significant layoffs, because in a competitive labor market **the laid-off workers can easily find equally good jobs.**214 In contrast, a merger that does create competitive concern should not be excused simply on the basis that it **allows the firm to cut costs by destroying jobs**. In such cases, antitrust doctrine does not allow efficiency gains in other markets to offset losses in one market.215 Thus, typically, **the worker-surplus implications of a merger will indicate its competitive effects**, just as in product markets consumer surplus is a strong but not perfect proxy for competitive effects. In some cases, a merger may **prove overall competitively harmful in labor markets** (thus **reducing worker welfare**) and beneficial in product markets (thus increasing consumer welfare). Such cases should be treated roughly like ones where competitive harm occurs in one product market but there are competitive benefits in another product market. To the extent possible, antitrust authorities should try to find remedies that address the competitive harms while preserving the benefits, such as requiring the spinning off of critical units that would allow an increase in market power. However, **the frequency of such cases should not be exaggerated**; mergers that increase labor market power and thus raise effective costs will not usually bring lower prices to consumers, and mergers increasing product market power and thus reducing sales will not typically create great jobs. As we noted in section I.A.3, enforcers should **not believe** the canard that the monopsonist’s lower labor costs are **passed on to consumers as lower prices**.216 Monopsony power raises the effective marginal cost a firm faces and thus should almost always lead to increased prices. Similar analysis applies to the merger-specificity of the efficiency gains: productivity gains that could be achieved absent the anticompetitive effects of the merger should not play a role in merger analysis.

#### Growing economic inequality drives diversionary nationalism and makes war inevitable.

Frederick Solt 11. Ph.D. in Political Science from University of North Carolina at Chapel Hill, currently Associate Professor of Political Science at the University of Iowa, Assistant Professor, Departments of Political Science and Sociology, Southern Illinois at the time of publication. “Diversionary Nationalism: Economic Inequality and the Formation of National Pride.” The Journal of Politics, Vol. 73, No. 3, pgs. 821-830, July 2011.

One of the oldest theories of nationalism is that states instill the nationalist myth in their citizens to divert their attention from great economic inequality and so forestall pervasive unrest. Because the very concept of nationalism obscures the extent of inequality and is a potent tool for delegitimizing calls for redistribution, it is a perfect diversion, and states should be expected to engage in more nationalist mythmaking when inequality increases. The evidence presented by this study supports this theory: across the countries and over time, where economic inequality is greater, nationalist sentiments are substantially more widespread.

This result adds considerably to our understanding of nationalism. To date, many scholars have focused on the international environment as the principal source of threats that prompt states to generate nationalism; the importance of the domestic threat posed by economic inequality has been largely overlooked. However, at least in recent years, domestic inequality is a far more important stimulus for the generation of nationalist sentiments than the international context. Given that nuclear weapons—either their own or their allies’—rather than the mass army now serve as the primary defense of many countries against being overrun by their enemies, perhaps this is not surprising: nationalism-inspired mass mobilization is simply no longer as necessary for protection as it once was (see Mearsheimer 1990, 21; Posen 1993, 122–24).

Another important implication of the analyses presented above is that growing economic inequality may increase ethnic conflict. States may foment national pride to stem discontent with increasing inequality, but this pride can also lead to more hostility towards immigrants and minorities. Though pride in the nation is distinct from chauvinism and outgroup hostility, it is nevertheless closely related to these phenomena, and recent experimental research has shown that members of majority groups who express high levels of national pride can be nudged into intolerant and xenophobic responses quite easily (Li and Brewer 2004). This finding suggests that, by leading to the creation of more national pride, higher levels of inequality produce environments favorable to those who would inflame ethnic animosities.

Another and perhaps even more worrisome implication regards the likelihood of war. Nationalism is frequently suggested as a cause of war, and more national pride has been found to result in a much greater demand for national security even at the expense of civil liberties (Davis and Silver 2004, 36–37) as well as preferences for “a more militaristic foreign affairs posture and a more interventionist role in world politics” (Conover and Feldman 1987, 3). To the extent that these preferences influence policymaking, the growth in economic inequality over the last quarter century should be expected to lead to more aggressive foreign policies and more international conflict. If economic inequality prompts states to generate diversionary nationalism as the results presented above suggest, then rising inequality could make for a more dangerous world.

The results of this work also contribute to our still limited knowledge of the relationship between economic inequality and democratic politics. In particular, it helps explain the fact that, contrary to median-voter models of redistribution (e.g., Meltzer and Richard 1981), democracies with higher levels of inequality do not consistently respond with more redistribution (e.g., Bénabou 1996). Rather than allowing redistribution to be decided through the democratic process suggested by such models, this work suggests that states often respond to higher levels of inequality with more nationalism. Nationalism then works to divert attention from inequality, so many citizens neither realize the extent of inequality nor demand redistributive policies. By prompting states to promote nationalism, greater economic inequality removes the issue of redistribution from debate and therefore narrows the scope of democratic politics.

#### Labor market inequities create slow and unstable growth---COVID proves.

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Why It Matters

It should be fairly obvious why these imperfections in the labor market matter so much: one of the most disturbing aspects of growth in the United States in recent decades is the growing inequality (see, e.g., Ostry, Berg, and Tsangarides 2019; Stiglitz 2012, 2019; and a rash of other books on the topic). Most of the gains in the economy have gone to the top 10 percent, the top 1 percent, and the top 0.1 percent. Some of the growing inequality has to do with increases in wage disparity—known as labor market polarization. But much of it has to do with the decreasing share of national income going to workers.8 This is where the decreasing market power of workers and the increasing market power of corporations comes in. This decreasing market power is more than just changes in technology or even globalization: it is also the broader changes in our economy, society, and politics—and especially the changes described earlier in this introduction and elsewhere in this volume—that have led to this growing imbalance of market power.

Research at the International Monetary Fund (Ostry, Berg, and Tsangarides 2014) and elsewhere (Ostry, Berg, and Tsangarides 2019) has highlighted the broader consequences of this growing inequality, even on economic performance. Economies that are more unequal are less stable and grow more slowly. In The Price of Inequality I explain the reasons that we pay such a high price for inequality.

The COVID-19 crisis has provided a dramatic illustration: inequalities in income translate into inequalities in health, especially in a society, like that of the United States, that relies on markets to dispense healthcare. The virus is not an equal opportunity virus—it appears to have the most devastating effects on people who have underlying health conditions. Our health inequalities are undoubtedly one of the reasons that the United States led the world in COVID-19 deaths.

Short-sighted employers did not provide sick leave and government did not require it—even when Congress seemed to recognize that workers without sick leave, who live paycheck to paycheck with virtually no money in the bank, would go to work even when they were sick. They had to work in order to survive, but that meant they helped to spread the disease. After lobbying by the large corporations, Congress decided that employers with more than 500 employees—almost half of the private labor force— were exempt from providing sick leave. With so few workers unionized, employees simply did not have the bargaining power to demand paid sick leave, personal protective equipment, or COVID-19 tests. Government should have required all these things, of course, and it had the power to do so under OSHA, but chose not to. Workers were desperate for the protection, but lacked the bargaining power to get it.

#### Monopsonies are key---inequality hollows out economics resilience---shocks are inevitable, only worker stability makes recovery possible.

Kate Bahn 21. Washington Center for Equitable Growth Testimony before the Joint Economic Committee, "Kate Bahn testimony before the Joint Economic Committee on monopsony, workers, and corporate power". Equitable Growth. 7-14-2021. https://equitablegrowth.org/kate-bahn-testimony-before-the-joint-economic-committee-on-monopsony-workers-and-corporate-power/

Thank you Chair Beyer, Ranking Member Lee, and members of the Joint Economic Committee for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor Market Policy and the interim Chief Economist at the Washington Center for Equitable Growth. We seek to advance evidence-backed ideas and policies that promote strong, stable and broad-based growth. Core to this mission is understanding the ways in which inequality has distorted, subverted and obstructed economic growth in recent decades.

Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality and made the U.S. economy less efficient. Reversing the trends that have led to a “second gilded age” is critical to encouraging a resilient economic recovery following the pandemic-induced economic crisis of 2020 and encouraging a healthy, competitive economy for the future.

Introduction

The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market and demonstrated that a rising tide does not lift all boats. Furthermore, economic evidence demonstrates how inequality results in an inefficient allocation of talent and resources while increasing corporate concentration that enriches the few while holding back the entire economy from its potential. Understanding the causes and consequences of the concentration of corporate power will guide policymaking in order to ensure that the economic recovery in the next phase of the pandemic will be broadly shared and ensure a more resilient economy.

“Monopsony” is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of “monopoly,” but instead of having only one producer of a good or service, there is effectively only one buyer of a good or service, such as only one employer hiring people’s labor in a company town. Like in monopoly, this phenomenon is not limited to when a firm is strictly the only buyer of labor. Today I will explain the circumstances and effects of employers having significant monopsony power over the market and over workers.

When employers have outsized power in employment relationships, they are able to set wages for their workers, rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers. This means paying them less than the value they contribute to production. One recent survey of all the economic research on monopsony finds that, on average across studies, employers have the power to keep wages over one-third less than they would be in a perfectly competitive market. Put another way, in a theoretical competitive market, if an employer cut wages then all workers would quit. But in reality, these estimates are the equivalent of a firm cutting wages by 5 percent yet only losing 10 percent to 20 percent of their workers, thus growing their profits without significantly impacting their business.

It is not only important for workers to earn a fair share so they can support themselves and their families, but also critical to ensure that our economy rebuilds to be stronger and more resilient. Prior to the current public health crisis and resulting recession, earnings inequality had been growing since at least the 1980s while the labor share of national income has been declining in same period. This is cause for concern as recent evidence suggests that the labor share of income has a positive impact on GDP growth in the long-run.

The unprecedented economic shock caused by the coronavirus pandemic revealed how economic inequality leads to a fragile economy, where those with the least are hit the hardest, amplifying recessions since lower-income workers typically spend more of their income in the economy. But the crisis also demonstrated how economic policy targeted toward workers and families can provide a foundation for growth. This is because workers are the economy, and pushing back against the concentration corporate power by providing resources to workers is the foundation for strong, stable and broadly shared growth.

The Causes of Monopsony

The concept of monopsony was initially developed by the early 20th century economist Joan Robinson, who examined how lack of competition led to unfair and inefficient economic outcomes. The prototypical example of monopsony is a company town, where there is one very dominant employer and workers have no choice but to accept low wages since they have no outside options. This is the most extreme case, but it is important to note that firms have monopsony power in any circumstance where workers aren’t moving between jobs seamlessly in search of the highest wages they can get.

Firms can use monopsony power to lower workers’ wages any time workers:

* Have few potential employers
* Face job mobility constraints
* Can only gather imperfect information about employers and jobs
* Have divergent preferences for job attributes
* Lack the ability to bargain over those offers

I will go through each of these factors in turn and demonstrate how labor markets are unique compared to other markets in dealing with competitive forces.

While concentrated labor markets are not the norm, they are pervasive across the United States, especially within certain sectors or locations. When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing that their workers have nowhere to go to find a better job with better pay. (See Figure 1.)

A study published in the journal Labour Economics by economists Jose Azar, Ioana Marinescu, and Marshall Steinbaum finds that 60 percent of U.S. local labor markets are highly concentrated as defined by U.S. antitrust authorities’ 2010 horizontal merger guidelines. This accounts for 20 percent of employment in the United States. Research by economists Gregor Schubert, Anna Stansbury, and Bledi Tsaka goes further by estimating workers’ outside options, or the likelihood a worker is able to change into a different occupation or industry. This study finds that even with a more expansive definition of job opportunities more than 10 percent of the U.S. workforce is in local labor markets where pay is being suppressed by employer concentration by at least 2 percent, and a significant proportion of these workers facing few outside options are facing pay suppression of 5 percent or more. As study co-author Anna Stansbury noted, “for a typical full-time workers making $50,000 a year, a 2 percent pay reduction is equivalent to losing $1,000 per year and a 5 percent pay reduction is equivalent to losing $2,500 per year.”

Certain sectors are now very concentrated, such as the healthcare industry. In a paper by the economists Elena Prager and Matt Schmitt, they find that hospital mergers led to negative wage growth among skilled workers such as nurses or pharmacy workers. Consolidation and outsized employer power, alongside other phenomenon such as the fissuring of the workplace, may have broader impacts on the structure of the U.S. labor market when it affects the overall structure of the labor market, including the hollowing out of middle class jobs that have historically been a pathway for upward mobility.

#### It’s the key internal link to growth---wage depression constrains worker supply, constrains output, and decreases investment.

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Intuitively, it seems likely that less expensive inputs or lower wages would mean savings for firms to pass on to the consumers. But it turns out that inefficiencies and lack of competition in upstream markets have ripple effects that can harm everyone. In a competitive market, employers pay the market wage; when there are vacancies, a marginal increase in pay will follow so employers can fill those vacancies. Labor monopsonists have different incentives. If they raise pay to fill a marginal vacancy, they might also have to raise pay for their existing employees. The small increase in pay needed to attract one more worker could mean a massive swing in overall labor cost (Krueger 2017). So even if growth would generally be good for the company, they might not be able to add the workers they need specifically because of the special dynamics of controlling too much of the market.

This is an extreme example, but the same general principle applies when employers have the market power to depress wages below competitive levels. When the marginal cost of filling vacancies and growing one’s business to efficient levels diverges from the firm’s individual incentives for doing so, firms are constricted and leave jobs unfilled. Constraining inputs like labor leads to constrained outputs, and if firms are producing less of the products that consumers want, then prices for those products go up. After all, supply constraints and price increases are two sides of the same coin, economically. Fewer workers ultimately means fewer goods, and fewer goods means higher prices for the limited amount of goods available.4 Over time, this problem is magnified because fewer workers are incentivized to enter the field at all. The supply of qualified workers will go down, further reducing the firm’s ultimate output below efficient levels. In the end, everyone suffers except the firm with market power, which captures outsized profits.

Think: Why does America have a chronic undersupply of nurses or teachers, as well as stagnant wages (Council of Economic Advisers 2016)? In a competitive market, undersupply would lead to higher wages and increased entry to the field. If wages are inefficiently underpriced, we end up without enough nurses and ballooning healthcare costs. (Not to mention that, in the case of nurses, we end up with worse health outcomes for consumers!) This is part of the reason it is so problematic to interpret the consumer welfare standard to mean that short-term consumer prices are increased: presumed price effects could be irrelevant or misleading as to the overall effect on consumers.

Antitrust enforcement is supposed to be dynamic and to be able to keep up with the state of economic theory.5 But this cross-pollination is not in evidence. For example, even though inefficiency anywhere in the supply chain leads to worse outcomes for consumers, product market cases outnumber labor market cases by a factor of nearly 15, and in mergers by closer to 35. Moreover, no recent merger has been blocked on the basis of labor market effects alone (Levi 1948, 540, fn10). A quick foray into how antitrust law has developed follows.

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

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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.

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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.

### FTC---1AC

#### Advantage 2 is FTC Credibility.

#### FTC promised labor protection---they’ll lose now but the plan makes them win.

Nicolás Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress.

Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.)

Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy.

Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image.

How the FTC can tackle antitrust

To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices.

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### Khan is advocating for the plan but constrained by the existing body of antitrust law---only adopting a new standard solves.

Tara L. Reinhart et al 21. \*Tara Reinhart is head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office. She focuses on civil litigation and government investigations, with an emphasis on complex antitrust litigation and international cartel probes. \*Steven C. Sunshine is the head of Skadden’s Global Antitrust/Competition Group. He represents clients in connection with antitrust aspects of mergers and acquisitions, litigation, counseling and grand jury investigations. \*David Wales is recognized as a leading antitrust lawyer and has over 25 years of experience in both private and public sectors. His practice focuses on providing antitrust advice to U.S. and international clients in a wide range of industries on all aspects of antitrust, including mergers and acquisitions, alliances, criminal grand jury investigations, dominant firm conduct, distribution arrangements, licensing and competitor collaborations. \*Julia York has represented numerous global corporations in various industries, including pharmaceuticals, telecommunications, energy and financial markets, in both litigation and transactional matters. “FTC Chair Khan Highlights Key Policy Priorities Going Forward, but Aggressive Agenda Faces Uphill Climb” Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates. 10-04-21. <https://www.skadden.com/insights/publications/2021/10/ftc-chair-khan-highlights-policy-priorities>

In a September 22, 2021, memorandum to staff, Federal Trade Commission (FTC) Chair Lina Khan formally laid out her “Vision and Priorities for the FTC,” reaffirming her calls for broad antitrust enforcement organized around three key policy priorities: merger enforcement, dominant intermediaries and restrictive contract terms. The memo further describes her vision for the agency’s strategic approach and operational objectives to support those priorities. Like her prior calls for antitrust reform and aggressive enforcement,1 the policy priorities outlined by Chair Khan are somewhat abstract and do not specify concrete actions the agency will take to achieve them. However, a close review of these high-level priorities, approach and objectives reveals some **practical obstacles to implementation**, including limitations **imposed by resource constraints and the existing body of antitrust law.** Policy Priorities: Merger Enforcement, Dominant Intermediaries and Restrictive Contract Terms Chair Khan listed three policy priorities for the agency going forward. First, she identified a need to strengthen the agency’s merger enforcement work to combat what she described as rampant consolidation and the market dominance she believes that consolidation has enabled. In particular, she expressed a concern that markets “will only become more consolidated” absent FTC vigilance and assertive action. She noted that revising the merger guidelines will be important to achieve merger reform, characterizing prior iterations of the guidelines as a “somewhat narrow and outdated framework for assessing mergers.” She also highlighted a need to find ways to deter unlawful transactions, including “facially illegal deals.” Second, Ms. Khan indicated her desire to focus enforcement on “dominant intermediaries and extractive business models.” After suggesting that market power is an increasingly systemic problem in the economy, and that the FTC should devote resources to regulating the most significant actors — with “next-generation technologies, innovations, and nascent industries” requiring particular vigilance, she focused specifically on the market position of “gatekeeper” companies and “dominant middlemen.” Such entities, according to Chair Khan, have been able to “hike fees, dictate terms, and protect and extend their market power.” She also posited that the involvement of private equity and other investment vehicles may strip such businesses of productive capacity and harm consumers. In discussing the agency’s strategic approach to address these issues, Chair Khan noted her intention to “focus[] on structural incentives that enable unlawful conduct,” and to “look[] upstream at the firms that are enabling and profiting from this conduct.” Third, Ms. Khan discussed certain contract terms, including **noncompete provisions**, repair restrictions and exclusionary clauses, that she believes could constitute unfair methods of competition or unfair or deceptive trade practices. She also **advocated for a “holistic” approach to identifying harms to account for effects on workers** and independent businesses. Describing this holistic approach in broad terms, she indicated that the agency would **focus on “power asymmetries** and the unlawful practices those imbalances enable,” and the effects such conduct has, for example, on **marginalized communities**. In sharing her hopes to “further democratize the agency,” Chair Khan similarly expressed that the FTC’s work should help “shape[] the **distribution of power and opportunity** across our economy.” More generally, the memo identifies areas of investment for the agency to help achieve these priorities. This includes incorporating a greater range of analytical tools and skillsets into the agency’s work, and expanding the agency’s regional footprint to grow its ranks, including by hiring additional technologists, data analysts, financial analysts and experts from outside disciplines. Chair Khan also announced that she will name Holly Vedova and Samuel Levine, both career FTC staff (as opposed to political appointees), as the director of the Bureau of Competition and the director of the Bureau of Consumer Protection, respectively. Practical Limitations on Implementation of Chair Khan’s Policy Priorities Chair Khan describes the antitrust agenda outlined in her memorandum as “robust,” and the memo communicates her intention to attempt to reshape antitrust policy and enforcement. However, a revolutionary shift in antitrust enforcement by the FTC will **face substantial practical challenges.** Most significantly, the path to reshaping antitrust enforcement will be constrained by the substantial body of existing antitrust law and the need to convince a federal judge that the **conduct in question is unlawful**. Chair Khan’s memo generally advocates for a new, more expansive and holistic approach to identifying antitrust harms **beyond the traditional focus on consumer welfare** and price effects. However, **courts have — and will likely continue to — rely on existing standards developed** in the case law over many decades. Those standards focus on consumer welfare and predominantly price effects. **Absent legislative change**, then, a **practical gap** will persist between Chair Khan’s **vision of refocused and more assertive antitrust enforcement**, on the one hand, and **the law that would apply** to any FTC enforcement action, on the other.2

#### That decimates the FTC---losses threaten the institution.

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But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines.

It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust.

What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril.

The FTC’s Rulemaking Authority

Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations.

However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people.

Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place.

Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation.

The Future of the FTC

One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future.

Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

#### Trust solves scams and privacy violation---it’s a prerequisite to all reforms.

Testimony of Ted Mermin 21. Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law. Before the United States House of Representatives Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers”. https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf

10. Trust the FTC. This final step informs all the others. There can be no doubt that there is more work to do protecting consumers than the FTC currently has the tools or resources to accomplish. There is also no doubt that the FTC has been trammeled in ways that its sister agencies, federal and state, have not. Whatever the reason, it is high time to retire the “zombie ideas” about the FTC – that the Commission is unnecessary, or overreaching, or heavy-handed, or inefficient.23 It is time, as one commissioner stated in Senate testimony last week, to “turn the page on the FTC’s perceived powerlessness.”24

For an American public eager for greater – not lesser – protection from increasingly sophisticated scam artists, deceptive advertisers, and privacy violating tech companies, building an effective FTC is an easy decision. It can and should be for this committee as well.

IV. Conclusion

This subcommittee meets at a remarkable historical moment, when the COVID-19 pandemic has revealed the profound need for a robust Federal Trade Commission just days after the Supreme Court made action by Congress an absolute necessity. This is a perilous time, with the chief protector of American consumers rendered nearly powerless just when those consumers are experiencing a heightened threat resulting from a once-in-a-century pandemic. The Consumer Protection and Recovery Act provides a critical first step toward restoring authority and effectiveness to the nation’s leading consumer protection agency.

Swift action to restore the FTC’s traditional 13(b) authority means that when constituents contact your office, and tell your staff that they have lost their life’s savings to a work-at-home scam, or their identity has been stolen and someone has opened accounts in their name, or they just spent their stimulus payment on a supposed cure for COVID for their grandmother who’s on a respirator – there will still be an agency to refer them to. No one wants that staffer to have to add: “Well, we could send you to the FTC, but they don’t actually have the power to get you your money back.”

Inaction or delay will mean no recovery for millions of wronged American consumers. The time to pass the Consumer Protection and Recovery Act is now.

#### Scamming causes extinction.

Casey Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

Beginning in the spring of 2018, scammers began to impersonate noted cryptocurrency enthusiast Elon Musk. They would use his profile photo, select a user name similar to his, and tweet out an offer that was effective despite being too good to be true: send him a little cryptocurrency, and he’ll send you a lot back. Sometimes the scammer would reply to a connected, verified account — Musk-owned SpaceX, for example — giving it additional legitimacy. Scammers would also amplify the fake tweet via bot networks, for the same purpose.

The events of 2018 showed us three things. One, at least some people fell for the scam, every single time — certainly enough to incentivize further attempts. Two, Twitter was slow to respond to the threat, which persisted well beyond the company’s initial comments that it was taking the issue seriously. And three, the demand from scammers coupled with Twitter’s initial measures to fight back set up a cat-and-mouse game that incentivized bad actors to take more drastic measures to wreak havoc.

That brings us to today. The story picks up with Nick Statt in The Verge:

The Twitter accounts of major companies and individuals have been compromised in one of the most widespread and confounding hacks the platform has ever seen, all in service of promoting a bitcoin scam that appears to be earning its creator quite a bit of money.

We don’t know how it’s happened or even to what extent Twitter’s own systems may have been compromised. The hack appears to have subsided, but new scam tweets were posting to verified accounts on a regular basis starting shortly after 4PM ET and lasting more than two hours. Twitter acknowledged the situation after more than an hour of silence, writing on its support account at 5:45PM ET, “We are aware of a security incident impacting accounts on Twitter. We are investigating and taking steps to fix it. We will update everyone shortly.”

Among the hacked accounts were President Barack Obama, Joe Biden, Amazon CEO Jeff Bezos, Bill Gates, the Apple and Uber corporate accounts, and pop star Kanye West.

But they came later. The first prominent individual account to be compromised? Elon Musk, of course.

Within the first hours of the attack, people were duped into sending more than $118,000 to the hackers. It also seems possible that a great number of sensitive direct messages could have been accessed by the attackers. Of even greater concern, though, is the speed and scale at which the attack unfolded — and the national security concerns it raises, which are profound.

The first and most obvious question is, of course, who did this and how? And at press time, we don’t know. At Vice, Joseph Cox, one of the best security reporters I know, reported that members of the underground hacking community are sharing screenshots suggesting someone gained access to an internal Twitter tool used for account management. Cox writes:

Two sources close to or inside the underground hacking community provided Motherboard with screenshots of an internal panel they claim is used by Twitter workers to interact with user accounts. One source said the Twitter panel was also used to change ownership of some so-called OG accounts—accounts that have a handle consisting of only one or two characters—as well as facilitating the tweeting of the cryptocurrency scams from the high profile accounts.

Twitter has been deleting screenshots of the panel and has suspended users who have tweeted the screenshots, claiming that the tweets violate its rules.

To speculate much further would be irresponsible, but Cox’s reporting suggests that this is not a garden-variety hack in which a bunch of people reused their passwords, or a hacker used social engineering to convince AT&T to swap a SIM card. One possibility is that hackers accessed internal Twitter tools; another that Cox raises is that a Twitter employee was involved in the incident — which, if true, would make this the second inside job revealed at Twitter this year.

In any case, Twitter’s response to the incident offered further cause for distress. The company’s initial tweet on the subject said almost nothing, and two hours later it had followed only to say what many users were forced to discover for themselves: that Twitter had disabled the ability of many verified users to tweet or reset their passwords while it worked to resolve the hack’s underlying cause.

The near-silencing of politicians, celebrities, and the national press corps led to much merriment on the service — see this, along with Those good tweets below, for some fun — but the move had other, darker implications. Twitter is, for better and worse, one of the world’s most important communications systems, and among its users are accounts linked to emergency medical services. The National Weather Service in Lincoln, IL, for example, had just tweeted a tornado warning before suddenly going dark. To the extent that anyone was relying on that account for further information about those tornadoes, they were out of luck.

Of course, Twitter’s move to stop verified accounts from tweeting represents a difficult balancing on equities. You would probably rather the National Weather Service not tweet than a hacker sell the account to a bad actor who logs in and falsely suggests that tornadoes are sweeping through every city in America. But the ham-fisted approach to resolving the issue — banning a huge portion of 359,000 verified accounts — reflects the staggering scale of the breach. This is as close to pulling the plug on Twitter as Twitter itself has ever come.

And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.)

It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it:

“I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.”

And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further.

Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again.

After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

#### AND fraud funds terrorists.

Frank S. Perri 10. Frank S. Perri, J.D., CFE, CPA. "The Fraud-Terror Link:". No Publication. xx-xx-xxxx. https://www.fraud-magazine.com/article.aspx?id=4294967888

The threat of terrorism has become the principal security concern in the United States since 9/11. Some might perceive that fraud isn’t linked to terrorism because white-collar crime issues are more the province of organized crime, but that perception is misguided. Terrorists derive funding from a variety of criminal activities ranging in scale and sophistication – from low-level crime to organized narcotics smuggling and fraud. CFEs need to know the latest links between fraud and terror.

Credit card fraud, wire fraud, mortgage fraud, charitable donation fraud, insurance fraud, identity theft, money laundering, immigration fraud, and tax evasion are just some of the types of fraud commonly used to fund terrorist cells. Such groups will also use shell companies to receive and distribute illicit funds. On the surface, these companies might engage in legitimate activities to establish a positive reputation in the business community.

Financing is required not just to fund specific terrorist operations but to meet the broader organizational costs of developing and maintaining a terrorist organization and to create an enabling environment necessary to sustain their activities. The direct costs of mounting individual attacks have been relatively low considering the damage they can yield.

“Part of the problem is that it takes so little to finance an operation,” said Gary LaFree, director of the University of Maryland’s National Consortium for the Study of Terrorism and Responses to Terrorism.2 For example, the 2005 London bombings cost about $15,600.3 The 2000 bombing of the USS Cole is estimated to have cost between $5,000 and $10,000.4 Al-Qaida’s entire 9/11 operation cost between $400,000 and $500,000, according to the final report of the National Commission on Terrorist Attacks Upon the United States.5

Terrorist groups require significant funds to create and maintain an infrastructure of organizational support, sustain an ideology of terrorism through propaganda, and finance the ostensibly legitimate activities needed to provide a veil of legitimacy for their shell companies.6 However, don’t think that only large operations are needed for terrorists to carry out attacks; small semi-autonomous cells in many countries are often just as capable of conducting disruptive activities without extensive outside financial help – they just conduct smaller-scale frauds.7

Even though the nexus between fraud and terrorism is undisputed, there’s concern at state and local levels that law enforcement professionals lack specialized knowledge on how to detect the fraud-terror link because they’re more apt to investigate and prosecute violent crimes.8

A critical lack of awareness about terrorists’ links to fraud schemes is undermining the fight against terrorism. Fraud analysis must be central, not peripheral, in understanding the patterns of terrorist behavior.9

#### Causes extinction---nuclear escalation.

Matthew Bunn & Nickolas Roth 17. \*Professor of practice at the Harvard Kennedy School. \*\*Research associate at the Belfer Center’s Project on Managing the Atom at Harvard University and research fellow at the Center for International and Security Studies at the University of Maryland. “The effects of a single terrorist nuclear bomb.” Bulletin of the Atomic Scientists, http://thebulletin.org/effects-single-terrorist-nuclear-bomb11150

The escalating threats between North Korea and the United States make it easy to forget the “nuclear nightmare,” as former US Secretary of Defense William J. Perry put it, that could result even from the use of just a single terrorist nuclear bomb in the heart of a major city. At the risk of repeating the vast literature on the tragedies of Hiroshima and Nagasaki—and the substantial literature surrounding nuclear tests and simulations since then—we attempt to spell out here the likely consequences of the explosion of a single terrorist nuclear bomb on a major city, and its subsequent ripple effects on the rest of the planet. Depending on where and when it was detonated, the blast, fire, initial radiation, and long-term radioactive fallout from such a bomb could leave the heart of a major city a smoldering radioactive ruin, killing tens or hundreds of thousands of people and wounding hundreds of thousands more. Vast areas would have to be evacuated and might be uninhabitable for years. Economic, political, and social aftershocks would ripple throughout the world. A single terrorist nuclear bomb would change history. The country attacked—and the world—would never be the same. The idea of terrorists accomplishing such a thing is, unfortunately, not out of the question; it is far easier to make a crude, unsafe, unreliable nuclear explosive that might fit in the back of a truck than it is to make a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. Numerous government studies have concluded that it is plausible that a sophisticated terrorist group could make a crude bomb if they got the needed nuclear material. And in the last quarter century, there have been some 20 seizures of stolen, weapons-usable nuclear material, and at least two terrorist groups have made significant efforts to acquire nuclear bombs. Terrorist use of an actual nuclear bomb is a low-probability event—but the immensity of the consequences means that even a small chance is enough to justify an intensive effort to reduce the risk. Fortunately, since the early 1990s, countries around the world have significantly reduced the danger—but it remains very real, and there is more to do to ensure this nightmare never becomes reality. Brighter than a thousand suns. Imagine a crude terrorist nuclear bomb—containing a chunk of highly enriched uranium just under the size of a regulation bowling ball, or a much smaller chunk of plutonium—suddenly detonating inside a delivery van parked in the heart of a major city. Such a terrorist bomb would release as much as 10 kilotons of explosive energy, or the equivalent of 10,000 tons of conventional explosives, a volume of explosives large enough to fill all the cars of a mile-long train. In a millionth of a second, all of that energy would be released inside that small ball of nuclear material, creating temperatures and pressures as high as those at the center of the sun. That furious energy would explode outward, releasing its energy in three main ways: a powerful blast wave; intense heat; and deadly radiation. The ball would expand almost instantly into a fireball the width of four football fields, incinerating essentially everything and everyone within. The heated fireball would rise, sucking in air from below and expanding above, creating the mushroom cloud that has become the symbol of the terror of the nuclear age. The ionized plasma in the fireball would create a localized electromagnetic pulse more powerful than lightning, shorting out communications and electronics nearby—though most would be destroyed by the bomb’s other effects in any case. (Estimates of heat, blast, and radiation effects in this article are drawn primarily from Alex Wellerstein’s “Nukemap,” which itself comes from declassified US government data, such as the 660-page government textbook The Effects of Nuclear Weapons.) At the instant of its detonation, the bomb would also release an intense burst of gamma and neutron radiation which would be lethal for nearly everyone directly exposed within about two-thirds of a mile from the center of the blast. (Those who happened to be shielded by being inside, or having buildings between them and the bomb, would be partly protected—in some cases, reducing their doses by ten times or more.) The nuclear flash from the heat of the fireball would radiate in both visible light and the infrared; it would be “brighter than a thousand suns,” in the words of the title of a book describing the development of nuclear weapons—adapting a phrase from the Hindu epic the Bhagavad-Gita. Anyone who looked directly at the blast would be blinded. The heat from the fireball would ignite fires and horribly burn everyone exposed outside at distances of nearly a mile away. (In the Nagasaki Atomic Bomb Museum, visitors gaze in horror at the bones of a human hand embedded in glass melted by the bomb.) No one has burned a city on that scale in the decades since World War II, so it is difficult to predict the full extent of the fire damage that would occur from the explosion of a nuclear bomb in one of today’s cities. Modern glass, steel, and concrete buildings would presumably be less flammable than the wood-and-rice-paper housing of Hiroshima or Nagasaki in the 1940s—but many questions remain, including exactly how thousands of broken gas lines might contribute to fire damage (as they did in Dresden during World War II). On 9/11, the buildings of the World Trade Center proved to be much more vulnerable to fire damage than had been expected. Ultimately, even a crude terrorist nuclear bomb would carry the possibility that the countless fires touched off by the explosion would coalesce into a devastating firestorm, as occurred at Hiroshima. In a firestorm, the rising column of hot air from the massive fire sucks in the air from all around, creating hurricane-force winds; everything flammable and everything alive within the firestorm would be consumed. The fires and the dust from the blast would make it extremely difficult for either rescuers or survivors to see. The explosion would create a powerful blast wave rushing out in every direction. For more than a quarter-mile all around the blast, the pulse of pressure would be over 20 pounds per square inch above atmospheric pressure (known as “overpressure”), destroying or severely damaging even sturdy buildings. The combination of blast, heat, and radiation would kill virtually everyone in this zone. The blast would be accompanied by winds of many hundreds of miles per hour. The damage from the explosion would extend far beyond this inner zone of almost total death. Out to more than half a mile, the blast would be strong enough to collapse most residential buildings and create a serious danger that office buildings would topple over, killing those inside and those in the path of the rubble. (On the other hand, the office towers of a modern city would tend to block the blast wave in some areas, providing partial protection from the blast, as well as from the heat and radiation.) In that zone, almost anything made of wood would be destroyed: Roofs would cave in, windows would shatter, gas lines would rupture. Telephone poles, street lamps, and utility lines would be severely damaged. Many roads would be blocked by mountains of wreckage. In this zone, many people would be killed or injured in building collapses, or trapped under the rubble; many more would be burned, blinded, or injured by flying debris. In many cases, their charred skin would become ragged and fall off in sheets. The effects of the detonation would act in deadly synergy. The smashed materials of buildings broken by the blast would be far easier for the fires to ignite than intact structures. The effects of radiation would make it far more difficult for burned and injured people to recover. The combination of burns, radiation, and physical injuries would cause far more death and suffering than any one of them would alone. The silent killer. The bomb’s immediate effects would be followed by a slow, lingering killer: radioactive fallout. A bomb detonated at ground level would dig a huge crater, hurling tons of earth and debris thousands of feet into the sky. Sucked into the rising fireball, these particles would mix with the radioactive remainders of the bomb, and over the next few hours or days, the debris would rain down for miles downwind. Depending on weather and wind patterns, the fallout could actually be deadlier and make a far larger area unusable than the blast itself. Acute radiation sickness from the initial radiation pulse and the fallout would likely affect tens of thousands of people. Depending on the dose, they might suffer from vomiting, watery diarrhea, fever, sores, loss of hair, and bone marrow depletion. Some would survive; some would die within days; some would take months to die. Cancer rates among the survivors would rise. Women would be more vulnerable than men—children and infants especially so. Much of the radiation from a nuclear blast is short-lived; radiation levels even a few days after the blast would be far below those in the first hours. For those not killed or terribly wounded by the initial explosion, the best advice would be to take shelter in a basement for at least several days. But many would be too terrified to stay. Thousands of panic-stricken people might receive deadly doses of radiation as they fled from their homes. Some of the radiation will be longer-lived; areas most severely affected would have to be abandoned for many years after the attack. The combination of radioactive fallout and the devastation of nearly all life-sustaining infrastructure over a vast area would mean that hundreds of thousands of people would have to evacuate. Ambulances to nowhere. The explosion would also destroy much of the city’s ability to respond. Hospitals would be leveled, doctors and nurses killed and wounded, ambulances destroyed. (In Hiroshima, 42 of 45 hospitals were destroyed or severely damaged, and 270 of 300 doctors were killed.) Resources that survived outside the zone of destruction would be utterly overwhelmed. Hospitals have no ability to cope with tens or hundreds of thousands of terribly burned and injured people all at once; the United States, for example, has 1,760 burn beds in hospitals nationwide, of which a third are available on any given day. And the problem would not be limited to hospitals; firefighters, for example, would have little ability to cope with thousands of fires raging out of control at once. Fire stations and equipment would be destroyed in the affected area, and firemen killed, along with police and other emergency responders. Some of the first responders may become casualties themselves, from radioactive fallout, fire, and collapsing buildings. Over much of the affected area, communications would be destroyed, by both the physical effects and the electromagnetic pulse from the explosion. Better preparation for such a disaster could save thousands of lives—but ultimately, there is no way any city can genuinely be prepared for a catastrophe on such a historic scale, occurring in a flash, with zero warning. Rescue and recovery attempts would be impeded by the destruction of most of the needed personnel and equipment, and by fire, debris, radiation, fear, lack of communications, and the immense scale of the disaster. The US military and the national guard could provide critically important capabilities—but federal plans assume that “no significant federal response” would be available for 24-to-72 hours. Many of those burned and injured would wait in vain for help, food, or water, perhaps for days. The scale of death and suffering. How many would die in such an event, and how many would be terribly wounded, would depend on where and when the bomb was detonated, what the weather conditions were at the time, how successful the response was in helping the wounded survivors, and more. Many estimates of casualties are based on census data, which reflect where people sleep at night; if the attack occurred in the middle of a workday, the numbers of people crowded into the office towers at the heart of many modern cities would be far higher. The daytime population of Manhattan, for example, is roughly twice its nighttime population; in Midtown on a typical workday, there are an estimated 980,000 people per square mile. A 10-kiloton weapon detonated there might well kill half a million people—not counting those who might die of radiation sickness from the fallout. (These effects were analyzed in great detail in the Rand Corporation’s Considering the Effects of a Catastrophic Terrorist Attack and the British Medical Journal’s “Nuclear terrorism.”) On a typical day, the wind would blow the fallout north, seriously contaminating virtually all of Manhattan above Gramercy Park; people living as far away as Stamford, Connecticut would likely have to evacuate. Seriously injured survivors would greatly outnumber the dead, their suffering magnified by the complete inadequacy of available help. The psychological and social effects—overwhelming sadness, depression, post-traumatic stress disorder, myriad forms of anxiety—would be profound and long-lasting. The scenario we have been describing is a groundburst. An airburst—such as might occur, for example, if terrorists put their bomb in a small aircraft they had purchased or rented—would extend the blast and fire effects over a wider area, killing and injuring even larger numbers of people immediately. But an airburst would not have the same lingering effects from fallout as a groundburst, because the rock and dirt would not be sucked up into the fireball and contaminated. The 10-kiloton blast we have been discussing is likely toward the high end of what terrorists could plausibly achieve with a crude, improvised bomb, but even a 1-kiloton blast would be a catastrophic event, having a deadly radius between one-third and one-half that of a 10-kiloton blast. These hundreds of thousands of people would not be mere statistics, but countless individual stories of loss—parents, children, entire families; all religions; rich and poor alike—killed or horribly mutilated. Human suffering and tragedy on this scale does not have to be imagined; it can be remembered through the stories of the survivors of the US atomic bombings of Hiroshima and Nagasaki, the only times in history when nuclear weapons have been used intentionally against human beings. The pain and suffering caused by those bombings are almost beyond human comprehension; the eloquent testimony of the Hibakusha—the survivors who passed through the atomic fire—should stand as an eternal reminder of the need to prevent nuclear weapons from ever being used in anger again. Global economic disaster. The economic impact of such an attack would be enormous. The effects would reverberate for so far and so long that they are difficult to estimate in all their complexity. Hundreds of thousands of people would be too injured or sick to work for weeks or months. Hundreds of thousands more would evacuate to locations far from their jobs. Many places of employment would have to be abandoned because of the radioactive fallout. Insurance companies would reel under the losses; but at the same time, many insurance policies exclude the effects of nuclear attacks—an item insurers considered beyond their ability to cover—so the owners of thousands of buildings would not have the insurance payments needed to cover the cost of fixing them, thousands of companies would go bankrupt, and banks would be left holding an immense number of mortgages that would never be repaid. Consumer and investor confidence would likely be dramatically affected, as worried people slowed their spending. Enormous new homeland security and military investments would be very likely. If the bomb had come in a shipping container, the targeted country—and possibly others—might stop all containers from entering until it could devise a system for ensuring they could never again be used for such a purpose, throwing a wrench into the gears of global trade for an extended period. (And this might well occur even if a shipping container had not been the means of delivery.) Even the far smaller 9/11 attacks are estimated to have caused economic aftershocks costing almost $1 trillion even excluding the multi-trillion-dollar costs of the wars that ensued. The cost of a terrorist nuclear attack in a major city would likely be many times higher. The most severe effects would be local, but the effects of trade disruptions, reduced economic activity, and more would reverberate around the world. Consequently, while some countries may feel that nuclear terrorism is only a concern for the countries most likely to be targeted—such as the United States—in reality it is a threat to everyone, everywhere. In 2005, then-UN Secretary-General Kofi Annan warned that these global effects would push “tens of millions of people into dire poverty,” creating “a second death toll throughout the developing world.” One recent estimate suggested that a nuclear attack in an urban area would cause a global recession, cutting global Gross Domestic Product by some two percent, and pushing an additional 30 million people in the developing world into extreme poverty. Desperate dilemmas. In short, an act of nuclear terrorism could rip the heart out of a major city, and cause ripple effects throughout the world. The government of the country attacked would face desperate decisions: How to help the city attacked? How to prevent further attacks? How to respond or retaliate? Terrorists—either those who committed the attack or others—would probably claim they had more bombs already hidden in other cities (whether they did or not), and threaten to detonate them unless their demands were met. The fear that this might be true could lead people to flee major cities in a large-scale, uncontrolled evacuation. There is very little ability to support the population of major cities in the surrounding countryside. The potential for widespread havoc and economic chaos is very real. If the detonation took place in the capital of the nation attacked, much of the government might be destroyed. A bomb in Washington, D.C., for example, might kill the President, the Vice President, and many of the members of Congress and the Supreme Court. (Having some plausible national leader survive is a key reason why one cabinet member is always elsewhere on the night of the State of the Union address.) Elaborate, classified plans for “continuity of government” have already been drawn up in a number of countries, but the potential for chaos and confusion—if almost all of a country’s top leaders were killed—would still be enormous. Who, for example, could address the public on what the government would do, and what the public should do, to respond? Could anyone honestly assure the public there would be no further attacks? If they did, who would believe them? In the United States, given the practical impossibility of passing major legislation with Congress in ruins and most of its members dead or seriously injured, some have argued for passing legislation in advance giving the government emergency powers to act—and creating procedures, for example, for legitimately replacing most of the House of Representatives. But to date, no such legislative preparations have been made. In what would inevitably be a desperate effort to prevent further attacks, traditional standards of civil liberties might be jettisoned, at least for a time—particularly when people realized that the fuel for the bomb that had done such damage would easily have fit in a suitcase. Old rules limiting search and surveillance could be among the first to go. The government might well impose martial law as it sought to control the situation, hunt for the perpetrators, and find any additional weapons or nuclear materials they might have. Even the far smaller attacks of 9/11 saw the US government authorizing torture of prisoners and mass electronic surveillance. And what standards of international order and law would still hold sway? The country attacked might well lash out militarily at whatever countries it thought might bear a portion of responsibility. (A terrifying description of the kinds of discussions that might occur appeared in Brian Jenkins’ book, Will Terrorists Go Nuclear?) With the nuclear threshold already crossed in this scenario—at least by terrorists—it is conceivable that some of the resulting conflicts might escalate to nuclear use. International politics could become more brutish and violent, with powerful states taking unilateral action, by force if necessary, in an effort to ensure their security. After 9/11, the United States led the invasions of two sovereign nations, in wars that have since cost hundreds of thousands of lives and trillions of dollars, while plunging a region into chaos. Would the reaction after a far more devastating nuclear attack be any less?

#### FTC’s enforcement reputation solves global emerging tech---leadership and legitimacy are key.

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Despite these limitations, the FTC has a formidable reputation as an enforcement authority, and commercial entities, and their lawyers, pay close attention to its orders and decisions.248 For example, when the FTC issues a complaint, it is published on the FTC’s website, which often generates significant attention in the privacy community.249 One reason for this is the fear firms have of the FTC’s auditing process, which not only is “exhaustive and demanding,” but can last for as long as 20 years.250 As such, the FTC settles most of the enforcement actions it initiates.251 Firms are motivated to settle with the FTC because they can avoid having to admit any wrongdoing in exchange for taking remedial measures, and thus they also avoid the costs to their reputation from apologizing.252

Though done by necessity, the rule-making process the FTC engages in with its consent orders and settlement agreements can be of benefit when regulating emerging technologies. 253 For one, it allows the flexibility needed to adapt to new and rapidly changing situations.254 Further, the FTC can wait and see if an industry consensus develops around a particular standard before codifying that rule through its enforcement actions.255 As with the common law, which has long demonstrated the ability to adjust to technological changes iteratively, the FTC’s incremental case-bycase approach can help minimize the risks of producing incorrect or inappropriate regulatory policy outcomes.256

In addition to its use of consent orders and settlement agreements, the FTC has created a type of “soft law” by issuing guidelines, press releases, workshops, and white papers.257 Unlike in enforcement actions, where the FTC looks at a company’s conduct and sees how its behavior compares to industry standards, the FTC arrives at the best practices it develops for guidance purposes through a “deep and ongoing engagement with all stakeholders.”258 As such, not only is the FTC’s authority broad enough to regulate the use of emerging technologies such as AI in commerce, but the FTC’s enforcement actions also constitute a body of jurisprudence the FTC can rely on to address the real and potential harms that stem from the deployment of consumeroriented AI.259

Given its broad grant of authority, the regulatory tools at its disposal, and its experience dealing with emerging technologies, the FTC is currently in the best position to take the lead in regulating AI. The FTC’s leadership is sorely needed to fill in the remaining – and quite large – gaps in those few sectoral laws that specifically address AI and algorithmic decision-making.260 Several factors make the FTC the ideal agency for this role. First, the FTC can use its broad Section 5 powers to respond rapidly and nimbly to the types of unanticipated regulatory issues AI is likely to create.261

Second, the FTC has an established history of approaching emerging technologies with “a light regulatory touch” during their beginning stages, waiting to increase its regulatory efforts only once the technology has become more established.262 This approach provides the innovative space needed for new technologies such as AI to develop to their full potential. Thus, as it has in the past, the FTC would focus on disclosure requirements rather than conduct prohibition, and take a case-by-case approach rather than rely on rulemaking.263 Also, as it has traditionally done, the FTC can hold public events on consumer-related AI and issue reports and white papers to guide industry.264

In other words, the FTC has long taken a co-regulatory approach to regulation, which it can and should proceed to do with AI. As in other emerging technology areas, this will help industry continue to grow and innovate, while allowing for the calibration among all relevant stakeholders of the “appropriate expectations” concerning the use and deployment of AI decision-making systems.265 At the same time, the FTC should use its regulatory powers to nudge, and when necessary, push companies to refrain from engaging in unfair and deceptive trade practices in the design and deployment of AI systems.266 The FTC should also place the onus on firms that design and implement those systems to ensure misplaced or unrealistic consumer expectations about AI are corrected.267

By nudging (or pushing) firms in this way, the FTC can “gradually impose a set of sticky default practices that companies can only deviate from if they very explicitly notify consumers.”268 In terms of disclosure requirements, as it has done in other contexts, the FTC can develop rules and guidelines for “when and how a company must disclose information to avoid deception and protect a consumer from harm,” which can include requiring firms to adopt the equivalent of a privacy policy. 269 Given the black box like nature of most algorithmic decision-making processes, there is much that AI developers might have to disclose to prevent those processes from being deemed unfair or deceptive.270

In addition, given its broad authority under Section 5, the FTC is able to address small, nuanced changes in AI design that could adversely affect consumers, but that other areas of law, such as tort, may not be able to adequately handle.271 Again, this is important because AI and algorithmic decision-making can pose profound and systemic risks of harm, even though the actual harm to individual consumers may be small or hard to quantify. And as it has done in the area of privacy, the FTC can become the de facto federal agency authority charged with protecting consumers from harms caused by AI systems and other algorithmic decisionmaking processes.272

The FTC also can, and should, seek to work with other agencies to address AI-related harms, given that the regulatory efforts of other agencies will still occur and be needed in specific sectors or industries, which would impact and be relevant to the FTC’s efforts as well.273 Agency cooperation is essential to ensuring regulatory consistency, accuracy, and efficiency in the type of complex, varied technological landscape that AI presents.274 This should not be a problem as the FTC’s Section 5 authority overlaps regularly with the authority of other agencies, and the FTC itself has a history of cooperating with those agencies.275 Further, the FTC can use its experience working with other agencies to build standards and policy consensus within the regulatory community and among stakeholders. 276

The overarching role the FTC has played in protecting consumer privacy within the United States also has given it legitimacy within the wider privacy community. The FTC has been pivotal over time in promoting international confidence in the United States’ ability to regulate privacy by for example acting as the essential mechanism for enforcing the Safe Harbor Agreement with the European Union.277 As it takes on a similar overarching regulatory role for AI and algorithmic decision-making processes in this country, the FTC should gain a similar level of legitimacy internationally. This is important given the increasingly cross border nature of AI research and development.

#### Unregulated emerging tech cause extinction---outweighs nuclear war.

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The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law.

Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the invention of new weapons. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that new technologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.”

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction:

A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other possible measures of the potential loss–including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise.

There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction. These measures include:

### Solvency---1AC

#### Contention 3 is Solvency.

#### Replacing consumer welfare with worker considerations lets labor win---alternatives legalize exploitation and ban collective bargaining.

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Introduction

This paper offers a critical investigation of the law and economics of competition law enforcement in conflicts between workers and employers in the European Union (hereinafter EU) and the US. In such cases competition law comes into direct conflict with the principle of worker solidarity: according to the principle of market competition individuals are expected to take independent economic decisions and actions, whereas workers need to take collective economic actions and decisions to protect their interests. This conflict is particularly obvious in the context of the so-called gig economy,1 in which employers keep casualised workers at legal arms’ length to reduce labour and regulatory costs.2 If gig workers take collective action against their working conditions, they might face attack from competition law, because legally they might be considered independent service providers, rather than workers.3

The legal conundrum facing gig workers has become an increasingly popular subject in the law and economics literature.4 Nevertheless, the more fundamental question of how the enforcement of competition rules affects the overall position of workers beyond the limited case of the gig economy remains largely unexplored. This paper aims to investigate this broader and more fundamental question. In order to provide a sufficiently global answer, the paper focuses on the legal positions of the EU and US, as the leading competition law jurisdictions and primary competition policy exporters.5 The EU–US comparison shows that despite the slightly different legal tests applied in these polities, competition rules constitute nearly equally disciplining mechanisms against collective worker action on either side of the Atlantic.

This paper also makes an original contribution to the emerging debate on whether and how competition law can contribute to wealth equality between citizens in the post-2008 crisis economy. The existing debate on the competition law–equality relationship takes the ‘consumer welfare’ standard as its main reference point: it focuses exclusively on the distribution of wealth between consumers and producers; as a result, it overlooks the production process that takes place before consumers meet products and services, and the position of workers within it.6 This is a natural result of competition law's reliance on a limited area of neoclassical economics called ‘equilibrium economics’ that understands efficiency exclusively as a market mechanism in which the price manifests itself where supply meets demand.7 Departing from the mainstream competition law and economics methodology, this paper builds its investigation on a holistic theoretical foundation, looking beyond equilibrium economics at labour exploitation theory as established in neoclassical as well as Marxian models. This analysis shows that despite standing at opposing ends of the political spectrum and whilst having some fundamental differences, Marxist and neoclassical models agree that collective worker action is economically beneficial and socially necessary. As a result, a critical analysis of the current legal situation on both sides of the Atlantic in light of this holistic framework illustrates how competition law's hostility towards collective worker action is not only unjust but also economically unsound.

This paper demonstrates that the key problem in competition law's treatment of labour stems from the application of the consumer welfare standard in cases involving the competition–solidarity conflict without paying any attention to the idiosyncratic qualities of labour that render it naturally open to exploitation. Similarly, the consumer welfare standard overlooks the fact that consumers and workers are essentially the same group of people and one's welfare cannot be increased or decreased without affecting the other's.8 Even if worker exploitation could result in reduced labour costs and decreased prices, this cannot be deemed efficient as it reduces the workers’ welfare and results in broader negative socio-economic effects. Similarly, collective worker action resulting in higher labour costs and potentially higher prices cannot automatically be deemed inefficient, because although this might increase the prices consumers pay, they benefit from higher wages and better working conditions in their position as workers. As a result of this critical analysis, the paper proposes an original and more inclusive ‘citizen welfare’ standard that takes into account the economic effects of anti-competitive behaviour on workers as well as consumers. The citizen welfare standard could also potentially be applied in other contexts to solve long-standing conflicts between competition and other policy objectives, such as industrial, environmental and social policy objectives,9 although this paper primarily focuses on the application of citizen welfare to the competition–solidarity conflict.

The structure of the paper is as follows: the next section provides an opening discussion of competition law, consumer welfare and equality. This is followed by a discussion of the economic theory of labour exploitation. Then, the paper investigates how competition law approaches the competition–solidarity conflict in the EU and the US. The fourth section critically discusses the EU and US legal positions in light of economic theory. This section also develops the citizen welfare approach as an alternative to consumer welfare for the resolution of the competition–solidarity conflict. This is finally followed with conclusions. Regarding terminology, this paper uses the term ‘worker’ (rather than employee) as a non-legal, generic term encompassing all individuals who make a living by providing labour power as a production factor in the production process of goods and services. Similarly, the term ‘labour’ is used to refer to the contribution of the workers to the production process as an abstract human factor. However, if the courts or authorities in question use a different term (such as employee) in a specific case, the paper uses the same term in the discussion of that specific case.

#### Antitrust law must prioritize worker welfare---workers suffer a greater loss than consumers.

Clayton J. Masterman 16. 2019 graduate of the Vanderbilt University Ph.D. Program in Law & Economics. “The Customer Is Not Always Right: Balancing Worker and Customer Welfare in Antitrust Law” Vol. Vanderbilt Law Review. 69:5:1387. 2016. <https://law.vanderbilt.edu/phd/students/The-Customer-Is-Not-Always-Right-Balancing-Worker-and-Customer-Welfare-in-Antitrust-Law.pdf>

As this Note has already stated, the purpose of antitrust law is to protect competition, but the **meaning of competition is nebulous**.136 Regardless of whether total welfare or the consumer welfare standard is the appropriate measure of net competitive effect,137 a body of law that protects competition should **not allow firms to engage in conduct that restricts trade severely** in one part of the supply chain merely because it prioritizes end customer benefits.138 As a class of consumers, **workers also deserve protection from anticompetitive employer agreements.** Congressional intent **supports prioritizing the interests of workers** over customers when analyzing anticompetitive restraints in labor markets. Unions are inherently anticompetitive; a union is a combination of workers jointly setting wages and other work conditions, just as a cartel is a combination of firms setting prices together.139 As a result, the existence of unions increases the wages that firms pay their workers, which in turn results in price increases for customers.140 Nonetheless, labor law staunchly defends the ability of workers to create unions. When antitrust restrictions would deter union conduct, Congress has decided that **labor law carries more weight.**141 Thus, the labor exceptions to antitrust law142 demonstrate a congressional decision that the welfare gains to workers from increased wages and other improved terms of employment outweigh the costs to customers in the output market from the resulting increased prices. Given that Congress protects workers in one class of anticompetitive conduct, it is reasonable to **structure antitrust law to protect workers from conduct with parallel effects**. Restraints of trade in labor markets are the converse of unions, trading lower wages for lower prices. However, it is possible that Congressional intent extends only to weighing the interests of workers over customers in the special case of union activity. Even though unions engage in political activies, the aims of unions are primarily economic.143 Thus, Congress supports the economic mission of unions (advancing the welfare of workers despite the potential economic effects on firms and customers) by favoring them in antitrust law. Unions are only special in antitrust because Congress has expressed a legislative preference for workers over other economic actors. It is thus **appropriate for courts to weigh workers over other actors** when firms engage in conduct that affects workers at the expense of other groups. Further, the welfare economics of restricting competition in employment markets supports worker protection. Economists generally agree that individuals exhibit diminishing marginal utilities of wealth—that is, each additional dollar an individual receives makes them a little less well off than the previous dollar did.144 **Diminishing marginal utility of wealth** thus implies that when two individuals lose equivalent amounts of money, the individual for whom the loss was a greater portion of his or her wealth **suffers a greater loss**.145 Generally, the wages that workers lose as a result of anticompetitive conduct will be larger than the price cuts for customers.146 Where the monopsonist also has market power in the output market, the price decrease passed on to customers will be even smaller than in a competitive output market.147 Because wages likely represent a larger portion of workers’ wealth than the additional wealth consumers gain from lower prices, workers lose more welfare than customers gain. Moreover, behavioral economics suggest that the losses to workers from wage reductions will **hurt workers more** than the gains that customers will receive from lower prices.148 Behavioral economists have recognized that individual utility is relative to a reference point like the status quo; losses relative to that reference point **cause a welfare loss about twice the size of the welfare gain** from an equivalent gain.149 Put simply, losses hurt more than equivalent gains feel good. Because monopsonistic conduct results in losses for workers and gains for customers relative to the competitive equilibrium, the **total net effect on welfare that consumers experience is even more likely to be negative.** To be sure, behavioral economics has not been universally welcomed in antitrust law.150 But courts have entertained behavioral economics arguments in antitrust before, generally in cases where neoclassical economic analysis would sharply diverge from what the court believes a “real” customer would do.151 Here, it is unlikely that customers weigh price decreases in the same way that workers weigh wage increases because wages are the primary source of most workers’ incomes; as a result, equivalent economic losses to workers likely outweigh the gain.152

#### The plan’s codification is key to certainty.

Eric A. Posner 8/13/21. Kirkland & Ellis Distinguished Service Professor at University of Chicago. How Antitrust Failed Workers. Oxford University Press, 2021.

Anticompetitive behavior. Plaintiffs would be able to base their case on any of the following anticompetitive acts: mergers in highly concentrated markets; use of noncompete and related clauses; restrictions on employees’ freedom to disclose wage and benefit information; unfair labor practices under the National Labor Relations Act;38 misclassification of employees as independent contractors; no-poaching, wage-fixing, and related agreements that are also presumptively illegal under Section 1; and prohibitions on class actions. Of course, current law gives employees the theoretical right to allege these types of anticompetitive behavior, but the cases show a pattern of judicial skepticism, as noted earlier. Codification would help employees by compelling courts to take these claims seriously. Employers would be allowed to rebut a prima facie case of anticompetitive behavior by showing that the act in question would likely lead to an increase in wages.

This reform would strengthen and extend Section 2 actions against labor monopsonists by standardizing a list of anticompetitive acts. While not all of these acts are invariably anticompetitive, the employer would be able to defend itself by citing a business justification. For example, a noncompete could be justified because it protects an employer’s investment in training. If so, an employer could avoid antitrust liability by showing that its use of noncompetes benefits workers, who obtain higher wages as a result of their training.39

These reforms would strengthen Section 2 claims against labor monopsonies but would also preserve the doctrinal structure of Section 2. They would not generate significant legal uncertainty or require a revision in the way that we think about antitrust law.

# 2AC

## Inequality Advantage

#### Only the plan solves growth.

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Labor monopsony is regulated by the antitrust laws, just as the more familiar phenomenon of monopoly is. Indeed, from an economic standpoint, monopolization of product markets and **monopsonization of labor markets** pose exactly the same challenge to the economy—mispricing of resources (material or human), resulting in their underemployment, which both **harms the economy and results in inequitable outcomes**. Because nominally **antitrust law applies to monopsony** as well as to monopoly,18 one might think there would be as much litigation against employers for labor-market monopsonization as there has been against firms for violating antitrust law in the product market. But the opposite is the case. The **antitrust laws have rarely been used against employers** by private litigants or the government.19 And when they have been used—whether by private litigants or by the government—they have been used mostly against the most obvious forms of anticompetitive conduct, like no-poaching agreements.20 Much under-the- radar activity **has been unaddressed.**

## FTC Advantage

## Small Businesses CP

#### Labor market power collapses the economy---inequality and wage stagnation.

Eric A. Posner 8/13/21. Kirkland & Ellis Distinguished Service Professor at University of Chicago. How Antitrust Failed Workers. Oxford University Press, 2021.

In the United States, and much of the Western world, economic growth has slowed, inequality has risen, and wages have stagnated. Academic research has identified several possible causes, ranging from structural shifts in the economy to public policy failure. One possible cause that has received increasing attention from economists is labor market power, the ability of employers to set wages below workers’ marginal revenue product.1 New evidence suggests that many labor markets around the country are not competitive but instead exhibit considerable market power enjoyed by employers, who use their market power to suppress wages. This phenomenon—the power of employers to suppress wages below the competitive rate—is known among economists as labor monopsony, or simply labor market power. Wage suppression enhances income inequality because it creates a wedge between the incomes of people who work in concentrated and competitive labor markets. Wage suppression also reduces the incomes of workers relative to those of people who live off capital, and the latter are almost uniformly wealthier than the former. Wage suppression also interferes with economic growth since it results in underemployment of labor and, while it may seem to raise the return on capital, actually depresses it, as capital must lie idle to take advantage of monopsony power. With wages artificially suppressed, qualified workers decline to take jobs, and workers may underinvest in skills and schooling. Many workers exit the workforce and rely on government benefits, including disability benefits that have become a hidden welfare system.2 This in turn costs the government both in lost taxes and in greater expenditures. One estimate finds that monopsony power in the U.S. economy reduces overall output and employment by 13% and labor’s share of national output by 22%.3

The claim that labor market power raises inequality and reduces growth mirrors another claim that has received attention lately—that the product market power of firms has contributed to rising inequality and faltering growth.4 A product market is a collection of products defined by frequent consumer substitution. When a small number of sellers or one seller of these products exist, we say that each seller has product market power, which enables it to charge a price higher than marginal cost, or the price that would prevail in a competitive market. When a small number of employers hire from a pool of workers of a certain skill level within the geographic area in which workers commute, the employers have labor market power.

One major source of market power in both types of markets is thus concentration, where only a few firms operate in a given market. Imagine, for example, a small town with only a few gas stations. Each gas station sets the price of gas to compete with the prices of the other gas stations. When a gas station lowers its price, it may obtain greater market share from the other gas stations—which increases profits—but it also receives less revenue per sale. If only a single gas station exists, it will maximize profits by charging a high (“monopoly”) price because the gains from buyers willing to pay the price exceed the lost revenue from buyers who stay away. If only a few gas stations exist, they might illegally enter a cartel in which they charge an above-market price and divide the profits, or they might informally coordinate, which is generally not illegal, though the social harm is the same. In contrast, if many gas stations compete, prices will be bargained down to the efficient level—the marginal cost—resulting in low prices for consumers and high aggregate output of gasoline.

Labor market concentration creates monopsony (or, if more than one employer, oligopsony, but I use these terms interchangeably) where labor market power is exercised by the buyer rather than (as in the example of gas stations) the seller. Employers are buyers of labor who operate within a labor market. A labor market is a group of jobs (e.g., computer programmers, lawyers, or unskilled workers) within a geographic area where the holders of those jobs could with relative ease switch among the jobs. The geographic area is usually defined by the commuting distance of workers. A labor market is concentrated if only one or a few employers hire from this pool of workers. For example, imagine the gas stations employ specialist maintenance workers who monitor the gas-pumping equipment. If only a few gas stations exist in that area, and no other firms (e.g., oil refineries) hire from this pool of workers, then the labor market is concentrated, and the employers have market power in the labor market. To minimize labor costs, the employers will hold wages down below what the workers would be paid in a competitive labor market—their marginal revenue product. Faced with these low wages, some people qualified to work will refuse to. But the employers gain more from wage savings than they lose in lost output because of the small workforce they employ.

Antitrust law does not distinguish monopoly and monopsony (including labor monopsony): firms that achieve monopolies or monopsonies through anticompetitive behavior violate antitrust law. But product market concentration has received a huge amount of attention by courts, researchers, and regulators, while labor market concentration has received hardly any attention at all.5 The Department of Justice (DOJ) and Federal Trade Commission’s (FTC) Horizontal Merger Guidelines, which are used to screen potential mergers for antitrust violations, provide an elaborate analytic framework for evaluating the product market effects of mergers. Yet, while the Merger Guidelines state that there is no distinction between seller and buyer power,6 they say nothing about the possible adverse labor market effects of mergers. Similarly, while there are thousands of reported cases involving allegations that firms have illegally cartelized product markets, there are few cases involving allegations of illegally cartelized labor markets.7

This historic imbalance between what I will call product market antitrust and labor market antitrust has no basis in economic theory. From an economic standpoint, the dangers to public welfare posed by product market power and labor market power are the same. As Adam Smith recognized, businesses gain in the same way by exploiting product market power and labor market power—enabling them to increase profits by raising prices (in the first case) or by lowering costs (in the second case).8 For that reason, businesses have the same incentive to obtain product market power and labor market power. Hence the need—in both cases—for an antitrust regime to prevent businesses from obtaining product and labor market power except when there are offsetting social gains.

#### The counterplan only solves the bottom end of the labor market.

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So, what can be done about monopsony? One approach is to directly raise wages, e.g., through minimum wages. This approach has its place but can only help to address monopsony power at the bottom end of the labour market. Elsewhere, perhaps we need measures to give countervailing power to workers, either through a more supportive environment for trade unions or giving workers a louder voice on boards. Trade unions are often accused of raising wages above competitive levels but if we start from a point where wages are too low, we want wages to be higher.

#### Minimum wage doesn’t solve inequality.

Christos Makridis 16. Ph.D. Candidate in Macroeconomics and Public Finance at Stanford University. “Raising the Minimum Wage Won’t Reduce Inequality” The New Republic. 02-05-16. <https://newrepublic.com/article/129286/raising-minimum-wage-wont-reduce-inequality>

How minimum wages affect inequality, however, remains controversial. Detecting it with **standard statistical methods is very challenging** because their full effects are constantly changing and require data on both individuals and companies. Back in 1999, Princeton economist David Lee used the Consumer Population Survey (CPS) from 1979 to 1989 to argue that the declining purchasing power of the minimum wage largely explains why inequality surged in the 1980s. Other new research, however, has put that conclusion in doubt. Perhaps the **most conclusive reassessment** comes from economists David Autor, Alan Manning, and Christopher Smith earlier this year. Using many more **years of microdata from the CPS**, as well as a different statistical approach, they found that the minimum wage explains **at most 30 percent** to 40 percent of the rise in wage inequality among the lowest earners. Since economists had thought that changes in the minimum wage could explain as much as 90 percent of the shift in inequality, these **new estimates are important.** How wages affect worker behavior While the extent is still uncertain, it’s clear that the minimum wage and other wage-setting forces such as tax rates and union bargaining power do in fact affect inequality and the labor market. My own ongoing research, which focuses on the link between such wage-setting mechanisms and company behavior, suggests labor-market distortions like raising the minimum wage can have other **negative effects on workers, businesses and inequality** beyond the overall impact on employment. The first adverse effect concerns how much people work. If, for example, worker wages rise due to a government mandate, the employer may reduce the number of hours staff work, leading to lower paychecks even after the raise. That’s part of the reason why we’ve seen companies like McDonald’s increasingly try to automate tasks that were once held by people. In addition, my research suggests one of the major ways people acquire new skills is by spending more time at work. Thus policies that lead to fewer hours could lower employees’ ability to improve their long-run earnings potential. The second is an indirect effect on the way businesses invest in workers and design compensation and organizational policies. When companies are forced to pay higher wages, they may offset the cost by reducing how much they invest in workers. There is **evidence that minimum wage laws have this effect.** This can result in weaker compensation contracts (e.g., purely salary-based), which provide employees with fewer incentives to accumulate skills. As a result, workers paid fixed wages suffer greater long-run earnings volatility than those receiving performance-based pay. Put simply, if a recession comes and an individual loses his or her job, having more skills makes it easier to find a new position and return to the previous income level. Minimal impact on inequality Even setting aside all the plausible economic arguments against the minimum wage, under the best case scenario, what does it really achieve? If the average full-time employee works 1,700 hours per year, then moving from $7.25 an hour to $9 an hour produces **only about $2,975 in additional annual earnings**. While some may argue that something is better than nothing, this would be **at best a marginal solution to inequality.** Taking a look at the most recent 2015 Current Population Survey data and restrict the sample to full-time earners with over $10,000 earnings per year, Americans at the 90th income percentile (they earn more than 90 percent of their compatriots, or $80,000 a year) make 5.6 times as much, on average, as those at the 10th percentile ($14,200). Increasing the minimum wage to $9 an hour would put the ratio around 4.65. In other words, **even in the best of worlds**—where the minimum wage has no unintended side effects—it appears to only **marginally reduce inequality.**

## Labor Law CP

#### Regulations fail---can’t adapt to market conditions.

Howard Shelanski 21. Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP. “Antitrust and Deregulation.” *Yale Law Journal* (127): 1951-1953. <https://www.yalelawjournal.org/pdf/Shelanski_kcn6n4k3.pdf>.

A longstanding debate examines the comparative advantages of antitrust and regulation. The late Cornell economist Alfred Kahn, the architect of airline deregulation in the Carter Administration, wrote that “society’s choices are always between or among imperfect systems, but that, wherever it seems likely to be effective, even very imperfect competition is preferable to regulation.”117 Kahn does not address antitrust in that quotation, but it suggests that he would find antitrust law’s more targeted, case-by-case approach to governing competition to be preferable to regulation. Indeed, Kahn elsewhere wrote, while expressing his “belief in vigorous enforcement of the antitrust laws,” that “the antitrust laws are not just another form of regulation but an alternative to it—indeed, its very opposite.”118 Then-Judge Stephen Breyer has similarly stated that “antitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative.”119

The comparisons that Breyer and Kahn made were, in context, mostly between antitrust and rate regulation, where the agency was trying to protect consumers from monopoly pricing.120 But some of these criticisms, including “high cost; ineffectiveness and waste; procedural unfairness, complexity, and delay; unresponsiveness to democratic control; and the inherent unpredictability of the end result,” apply to most kinds of regulation.121 Regulation might well be worthwhile despite those potential drawbacks, but certain attributes—ex post and case-by-case enforcement, judicial oversight with the government bearing the burden of proof—make antitrust enforcement less vulnerable to those critiques.

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

#### 2. Antitrust is a pre-requisite to effective labor law. Anything else allows skirting damages and prevention of effective collective bargaining.

Marshall Steinbam 19. Professor of Law, University of Utah. “Antitrust, The Gig Economy, and Labor Market Power.” *Law and Contemporary Problems* 82(3): 61-64.

This paper sets out an important but under-appreciated aspect of the rise in labor market precarity and diminishing worker bargaining power: the erosion of antitrust laws restricting dominant firms’ ability to use vertical restraints to control and restrict both less powerful affiliates and the workers who work for them, and the concurrent use of antitrust against any attempt by those workers or independent businessmen or contractors to bargain collectively against such concentrations of power. In ascertaining the causes of contemporary inequality in wealth, income, and social status, especially with respect to the labor market, we cannot overlook the role that antitrust has played.

This contrasts with a recent Economic Policy Institute paper by Heidi Shierholz and Josh Bivens that treats the rise of employer power in labor markets, and the extent to which weakening antitrust has caused that phenomenon, as a less important cause of rising inequality and stagnant wages compared to the erosion of labor law and thus of collective bargaining.95 Their evidence for the contention that diminishing worker bargaining power matters more than concentrated employer bargaining power is that inequality within the distribution of labor income is a more significant cause of stagnating wages and the growing gap between median worker pay and average worker productivity than is the declining labor share of national income, which is of more recent vintage than either of the first two economic trends.

But we cannot map rising labor income inequality to worker bargaining power and labor law and the declining labor share of income to employer power and antitrust so neatly. As the analysis in Parts II and III show, income inequality is to a large extent caused by rising earnings inequality between firms, rather than between workers, reflecting employer power to set wages. This is the result of the legalization of business models like the fissured workplace that allow powerful employers to segregate workers from the profits they earn for their bosses. The point of Part II of this paper is that the fissured workplace is the product of both labor regulation and antitrust. Thus, increasing inequality of power between employers and workers cannot be coherently treated as two separate phenomena: rising employer power, and declining worker power.

That means the solution to unequal bargaining power is not necessarily or not entirely an antitrust solution, but antitrust must play a major part, since it implicates the business models available to the economy’s dominant firms. In particular, we should seek, through revived antitrust and labor regulations that both take account of how the economy actually works, and how power is exercised within it, to re-establish the sharp distinction embodied in Richfield Oil. Either workers are employees, in which case they can be controlled by their bosses, who in turn owe them statutory protections including the right to bargain collectively, or they are independent businesses, in which case they cannot be coerced by contract or by any other means. Proposals to extend and strengthen labor law tests for statutory employment to take account of gig economy technologies are crucial, but they will be ineffective so long as employers and lead firms retain the strong incentive to push workers outside their protection. The role of antitrust in that context is to create a significant cost to so doing: the potential for treble damages under antitrust liability should a lead firm be caught coordinating and directing the activities of its non-employee subsidiaries and contractors. That is the mechanism that would weigh against employers’ incentive to mis-classify.

Putting such an antitrust regime in place entails the abandonment of both the consumer welfare standard and, with it, the Chicago School’s jurisprudence of vertical restraints. Instead, any vertical restraint, price or non-price, should be a presumptive violation of the Sherman Act if it is imposed by a firm with market power. And antitrust’s definition of market power must, in turn, be expanded beyond the confined market-share-based Sherman Act jurisprudence to instead take account of the many ways economists have of testing for the existence of market power. Firms would be judged to have market power if they:

• Have the power to unilaterally raise prices for their customers or lower them for their suppliers, including workers;

• Wage- or price-discriminate among customers, suppliers, or workers;

• Unilaterally impose non-price, uncompensated contractual provisions on their counterparties, like non-compete agreements in labor contracts;

• Impede or control entry by would-be competitors; or

• Earn profits and/or make payments to their shareholders at a rate in excess of their market cost of capital.

All of these things are economic indicia of market power because they could not be done by any one or more firms acting in concert in the face of competition from rivals—therefore they should be legal indicia of market power as well.96

Drilling down on how the antitrust laws should target labor market monopsony in particular, not merely prohibit vertical restraints that enable fissured workplace-style business models, the antitrust authorities should bring a monopsonization suit against an online labor platform like Uber that fixes wages and imposes exclusivity on independent businesses, along the lines of Meyer v. Kalanick. If, as would be expected, that case would be adjudicated under the Rule of Reason, despite its economic equivalence to the FTC’s per se cases against professional organizations and unions of independent contractors, then Congress should streamline the Rule of Reason for labor monopsony. This should be done along the lines proposed by Ioana Marinescu and Eric Posner, setting out principles to guide market definition that are responsive to measured firm-level labor supply elasticities.97 In fact, if firms have the unilateral power to dictate wages without causing a significant share of their workforce to leave, then the proper market definition for a monopsonization case may be significantly smaller than the one those authors recommend as a baseline. The point of such a suit is to force Uber to choose one business model or another: either employ the drivers if Uber wants to fix their wages and monitor them on the job, or give up the price- setting and market coordination power that makes the platform such a value proposition for its investors. It cannot be allowed to do both. Meanwhile, workers themselves who are not statutory employees should be protected by antitrust’s labor exemption and should be permitted to bargain collectively. However, any such extension of the labor exemption must not also immunize the powerful employer against whom they would seek to bargain. And at the very least, both no-poaching clauses in franchising contracts and non-compete clauses in employment contracts should be illegal per se.98

Finally, analysis of labor market impact should be incorporated in the statutory prospective merger review process that federal agencies undertake as a matter of routine, in order to prevent the harmful accumulation of monopsony power in labor markets by merger. The current FTC Chairman, Joseph Simons, said as much in Congressional testimony in the fall of 2018,99 but to date there is no evidence that any such investigation has taken place. In the recent merger approval for Staples’s takeover of its supplier Essendant, the majority of the commission claimed that the merger would have a pro-competitive impact on input markets.100 Specifically, if the combined firm reduced the price it pays to manufacturer, it would in fact purchase more from them, not less, and hence that price reduction would not be an exercise of buyer power (the majority’s opinion says nothing about labor specifically as an input). But the idea that the volume of sales is dispositive about the anti-competitive exercise of monopsony power is not correct. Wilmers finds evidence that dominant retailers and manufacturers impose price reductions on the suppliers over whom they exercise market power, and those suppliers in turn pass those price reductions through to their workers in the form of lower wages.101 That is an exercise of monopsony power, but it might well be accompanied by greater sales volume from the supplier to the dominant customer.

Altogether, the thesis of this paper is that there is no way to confront the economy’s crisis of unequal bargaining power without confronting the role that antitrust has played in getting us there. Antitrust is not a substitute to any of the many other ways that policy ought to be extended to halt and reverse the economy-wide erosion of worker bargaining power behind rising inequality and wage stagnation. But strengthening it is a necessary condition for the success of many of those alternatives, notably, labor law reform and collective bargaining on the part of precariously employed gig economy workers.

#### 3. Doesn’t solve deterrence. Ineffective remedies, agency capture, and expertise gaps ensure failure to curtail anticompetitive practices.

Samuel Weinstein 19. Assistant Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. “Article: Financial Regulation in the (Receding) Shadow of Antitrust.” *Temple Law Review* (91): 487-491.

Even when sector regulators prioritize protecting competition, many lack the expertise and institutional mechanisms to do so effectively. Regulatory agencies might not employ investigatory and adjudicatory procedures sufficient to root out anticompetitive conduct. While courts must in many cases allow for exhaustive discovery, the same cannot be said for most agency proceedings. As a result, even those sector regulators that value protecting competition may not have the institutional systems necessary to follow through effectively.

The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million."

Agency capture is another explanation for regulators' relative weakness as competition enforcers. The literature on capture is well developed. There is a general scholarly consensus that the political nature of top agency jobs and the revolving door between agencies and the industries they oversee make sector regulators much more susceptible to industry pressure than antitrust courts. Studies have shown that capture may be a particular problem at the financial regulatory agencies. There is a steady flow of lawyers between the SEC and CFTC, on the one hand, and Wall Street firms and the law firms and lobbyists [\*489] that represent them on the other, which appears to affect outcomes of agency proceedings in some cases.

Objective measures of the relative competition-enforcement abilities of the antitrust agencies versus the sector regulators tend to confirm the supposition that sector regulators generally cannot be relied on to fulfill the antitrust function in regulated markets. The expert staffs of the antitrust agencies are far larger and more experienced than the competition staffs, if any, at the sector regulators. In recent years, the Antitrust Division typically has had between 340 and 400 attorneys and approximately 50 economists dedicated to competition enforcement, while the FTC's Bureau of Competition has had around 300 attorneys and support staff and approximately 50 antitrust economists. Some regulatory agencies, like the FCC, Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve, have dedicated competition staff with specific expertise. The FCC has a Wireline Competition Bureau, which includes a Competition Policy Division. The FDIC, Federal Reserve, and the Office of the Comptroller of the Currency have staff dedicated to reviewing proposed bank mergers. Even at these agencies, however, the competition staff is smaller and more narrowly focused than the staffs of the Antitrust Division and FTC. [\*490] The comparison with the SEC and CFTC is starker. Neither agency has a dedicated competition division or group. And neither agency established such a body post-Credit Suisse, when it appeared the SEC and CFTC would have increased responsibility for competition matters, or in the wake of Dodd-Frank, which required the agencies to monitor and protect competition in the derivatives markets. This paucity of personnel resources is perhaps predictable given these agencies' bureaucratic cultures.

Considering this lack of experienced competition staff, it is unsurprising that the SEC and CFTC bring very few independent competition-related enforcement actions. While these agencies have collaborated with the [\*491] Department of Justice and other enforcement agencies on significant competition investigations, there is little evidence that they would bring such cases on their own. It seems clear that the financial services agencies are either unwilling or unable to "perform the antitrust function" as envisioned by the Supreme Court's case law balancing antitrust and regulation. This conclusion is troubling. It means that when courts apply Credit Suisse or Trinko to shift the responsibility for policing competition away from the expert antitrust agencies to regulatory bodies that are unprepared for the task, they are leaving some regulated markets, especially the financial markets, vulnerable to anticompetitive conduct.

#### Links to the net benefit---antitrust is the less stringent option.

Daniel Crane 18. Frederick Paul Furth Professor of Law, University of Michigan. “Antitrust's Unconventional Politics.” *Virginia Law Review* (104): 134-135. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3019&context=articles>.

Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative.

It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left– right categories.

#### Perm do the counterplan.

Robinhood Financial LLC 20. “What are Antitrust Laws?”. 10-6-20. https://learn.robinhood.com/articles/4x5oCZOtg43uORfxEnxPRW/what-are-antitrust-laws/

Antitrust laws are regulations that aim to promote fair business competition in an open market and protect consumers by banning certain predatory practices.

## Multilat CP

#### Countries won’t take sovereignty losses---even if the counterplan isn’t binding.

Bruno Bastos Becker 16. Associate of the Competition Practice at Barbosa, Müssnich & Aragão Advogados. Revista Do Ibrac Volume 22 - Número 1- 2016 Prêmio Ibrac - Tim 2015 “Decentralized Globalization: Possible Solutions for Multiple Merger Control Regimes in Cross-Border Transactions”. https://d1wqtxts1xzle7.cloudfront.net/52329387/SSRN-id2926207.pdf?1490635488=&response-content-disposition=inline%3B+filename%3DDecentralized\_Globalization\_Possible\_Sol.pdf&Expires=1633221921&Signature=AdZzigmFmDWzAJDsFfwmed9N0wgp7JMqh1Z7XUAIxb2ocUtkMJLFCwRj4NslBFsxzWeYwJ~gkHQm0Zb22NuvJwQzbnHnUMGlXzDXdujTXsxQFyE4fSapKDT9lbk2uWrYgrCBMfw0sli1tKJPOQsVlVyeKiSWoFIfkj5M9wQaGyLoucnRYm~66PajYX~ureUvwk~kMFcr4wNpXWCO~reag8ObhcgUhRDwNB34iNJF4Z08o4VGIOwP4CqvSs1VV3gIY4-rLKazwWkwkWHj1hK11yy3~HRWtDevXLzli8qGpvvc7Z8KKEA~nj-6HTtMX7Ps9nHZZJZVQW-lNK4fXHrCow\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

Over the last decade, several scholars have proposed different solutions for the problem of the decentralized globalization. However, none of the efforts resulted in a cohesive merger control system41. One of the main reasons is that merger policy is strongly related to industrial policy and, therefore, countries have rejected the possible loss of sovereignty42

---FOOTNOTE 42 STARTS, MIDPARAGRAPH---

42 “Because merger policy is usually closely linked to industrial policy, nowadays most countries are not ready to relinquish part of their sovereign rights in this area in order to support some sort of international merger policy, negotiated and implemented at a multilateral level. Therefore, absolutely no agreement on substantive rules to tackle mergers, not even in the form of «rule of reason» guidelines, seems to be foreseeable at international level in the near future”. (MONTINI, Massimiliano. Globalization and International Antitrust Cooperation. International Conference Trade and Competition in the WTO and Beyond. 1999. p. 18 Available at: http://www.feem.it/userfiles/attach/Publication/NDL1999/NDL1999-069.pdf)

---FOOTNOTE 42 ENDS, PARAGRAPH CONTINUES---

that is part of the main proposals so far. Furthermore, as pointed out by Jörg Terhechte, there are many differences between authorities that must be taken into account for the designing of a possible solution, like financial and personal resources, composition at the decisional level, independence, accountability43

#### Perm do the plan and establish a framework for contingent international cooperation over enforcement.

Bruno Bastos Becker 16. Associate of the Competition Practice at Barbosa, Müssnich & Aragão Advogados. Revista Do Ibrac Volume 22 - Número 1- 2016 Prêmio Ibrac - Tim 2015 “Decentralized Globalization: Possible Solutions for Multiple Merger Control Regimes in Cross-Border Transactions”. https://d1wqtxts1xzle7.cloudfront.net/52329387/SSRN-id2926207.pdf?1490635488=&response-content-disposition=inline%3B+filename%3DDecentralized\_Globalization\_Possible\_Sol.pdf&Expires=1633221921&Signature=AdZzigmFmDWzAJDsFfwmed9N0wgp7JMqh1Z7XUAIxb2ocUtkMJLFCwRj4NslBFsxzWeYwJ~gkHQm0Zb22NuvJwQzbnHnUMGlXzDXdujTXsxQFyE4fSapKDT9lbk2uWrYgrCBMfw0sli1tKJPOQsVlVyeKiSWoFIfkj5M9wQaGyLoucnRYm~66PajYX~ureUvwk~kMFcr4wNpXWCO~reag8ObhcgUhRDwNB34iNJF4Z08o4VGIOwP4CqvSs1VV3gIY4-rLKazwWkwkWHj1hK11yy3~HRWtDevXLzli8qGpvvc7Z8KKEA~nj-6HTtMX7Ps9nHZZJZVQW-lNK4fXHrCow\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

As seen above, none of the proposed solutions is able to thoroughly address both costs, procedural issues and different outcome problems described in this paper. On the one hand, the difficulties to establish a unified supranational authority faces the problem of loss of sovereignty, and on the other hand, the partiality of bilateral agreements and soft law make the proposed solutions insufficient in the current antitrust development scenario. Therefore, a more suitable solution for the “decentralized globalization” should involve the maintenance of the countries’ sovereignty and the freedom for the authorities to participate in this process: a case-by-case cooperation among authorities.

In this model, there would be no need for an ex-ante multilateral agreement among the authorities, since it would be defined on a case-by-case basis. The involved authorities (i.e., authorities of the countries affected by the transaction according to the effects doctrine) would jointly analyze cross-border transactions but without strict bindingness, and thus, leaving it possible an individual (traditional) assessment.

In this case, the involved authorities would sign a commitment whereby they would delegate case handlers in order to form an international group (“Comission”) – similar to an arbitral tribunal 67 - which would be comprised of members of all authorities of the countries affected by the transaction. Applying the notion of “enhanced comity”, “the state whose competition regime is best equipped to enforce any sanctions or remedies” would lead this commission68. Taking into account different internal procedures among the authorities, each one would determine the selection procedural for the case-handler in charge of the transaction. This person would be responsible for the thorough assessment of the transaction and the negotiation of remedies inside their institutions.

Once established, the Commission would also jointly define procedural issues (i.e., forms, deadlines, fees) and information required for the case assessment. Finally, the Commission would be in charge of discussing the assessment (i.e., definition of relevant markets, methodology and eventual remedies). Eventual disagreements would be discussed by the Commission and the divergent authority is able to issue a dissent decision, applying or not its own restrictions.

On the authorities’ perspective, and taking into account the already mentioned solutions (i.e., supranational agency, harmonization through soft law, bilateral agreements and multilevel system), this new alternative would possibly be more acceptable, since it would not require loss of sovereignty or impose substantial transaction costs to the authorities, like bilateral agreements or other costly adjustments. It would work as a sort of regulatory dualism in this international antitrust field69 , leaving it open to each authority (and every case) its adoption, depending on strategic and internal policy issues.

#### The US has no multilateral negotiating credibility---fails.

Rachel Myrick 6/14/21. Assistant Research Professor of Political Science at Duke University. "America Is Back—but for How Long?". Foreign Affairs. 6-14-2021. <https://www.foreignaffairs.com/articles/world/2021-06-14/america-back-how-long>

During his first address to a joint session of Congress on April 28, U.S. President Joe Biden noted that in the dozens of conversations with world leaders he’d had since taking office in January, one comment kept coming up: “We see America is back, **but for how long**?” This **skepticism on the part of other heads of state** is a direct response to the recent past. Under President Donald Trump, Washington **seriously challenged or outright withdrew** from more than a dozen international agreements or institutions, including the Paris climate accord, the Trans-Pacific Partnership, the Iran nuclear deal, and the World Health Organization. But concerns about the nature and longevity of American commitments **extend beyond Trump’s legacy** overseas. Allies of the United States are also reacting to its internal politics and, in particular, to a **deepening partisan divide** that creates uncertainty about the future of U.S. foreign policy. Observing the polarized politics on display in the run-up to the 2020 U.S. presidential election, former Norwegian Prime Minister Gro Harlem Brundtland noted that many European leaders will “no longer take for granted that they can trust the U.S., even on basic things.” The fears are valid. Although foreign policy has traditionally been insulated from political polarization, that is no longer true. On **such issues as multilateralism**, climate change, and terrorism, **Americans are more divided than ever.** The bipartisan foreign policy consensus among both voters and the politicians they elect is eroding. But even worse, **polarization** has created broader, underappreciated consequences for the United States’ ability to enact foreign policy in the first place by chipping away at a key pillar of its power: its **reputation for stability, credibility, and reliability.** THE DEMOCRATIC ADVANTAGE International relations scholars have long recognized that democracies enjoy several advantages when it comes to making foreign policy. For one thing, they are stable. In autocracies, when leaders are removed from power irregularly—such as through revolutions or military coups—the transitions often herald dramatic swings in foreign policy. By contrast, in democracies, where leader turnover occurs in the context of regular elections, foreign policy tends to remain fairly consistent during political transitions. As domestic polarization increases, however, **partisan conflict is more likely to extend into foreign policy.** In the United States, foreign policy remains less polarized than domestic policy. Even so, public opinion polls and patterns of congressional roll call votes show an increasing divergence between Democrats and Republicans on foreign affairs. As these preferences harden, one should anticipate more **dramatic changes** in foreign policy when the party controlling the White House changes. But it isn’t just diverging foreign policy preferences that lead to instability in foreign policy; a rise in the tendency to dislike the opposite party—or “negative partisanship”—also does. This sentiment gives leaders incentives to undo the policies of their predecessors from the opposite party. Some described Trump’s foreign policy agenda as “**incoherent**” and lacking in a grand strategic vision, yet his agenda did have one unifying theme: dismantling the accomplishments of President Barack Obama. Positioning himself as the **“anti-Obama” in foreign affairs**, Trump moved quickly to undo his predecessor’s policies on immigration, trade, and climate.

#### International “soft law” links to the net benefit.

Bruno Bastos Becker 16. Associate of the Competition Practice at Barbosa, Müssnich & Aragão Advogados. Revista Do Ibrac Volume 22 - Número 1- 2016 Prêmio Ibrac - Tim 2015 “Decentralized Globalization: Possible Solutions for Multiple Merger Control Regimes in Cross-Border Transactions”. https://d1wqtxts1xzle7.cloudfront.net/52329387/SSRN-id2926207.pdf?1490635488=&response-content-disposition=inline%3B+filename%3DDecentralized\_Globalization\_Possible\_Sol.pdf&Expires=1633221921&Signature=AdZzigmFmDWzAJDsFfwmed9N0wgp7JMqh1Z7XUAIxb2ocUtkMJLFCwRj4NslBFsxzWeYwJ~gkHQm0Zb22NuvJwQzbnHnUMGlXzDXdujTXsxQFyE4fSapKDT9lbk2uWrYgrCBMfw0sli1tKJPOQsVlVyeKiSWoFIfkj5M9wQaGyLoucnRYm~66PajYX~ureUvwk~kMFcr4wNpXWCO~reag8ObhcgUhRDwNB34iNJF4Z08o4VGIOwP4CqvSs1VV3gIY4-rLKazwWkwkWHj1hK11yy3~HRWtDevXLzli8qGpvvc7Z8KKEA~nj-6HTtMX7Ps9nHZZJZVQW-lNK4fXHrCow\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

3.2. Harmonization through “Soft Law”

The harmonization through “soft law” seems to be the most acceptable way to promote an at least coherent worldwide merger system51. Responding to this issue, Claire Cuttler states that “soft law, in contrast, is cheaper and easier to achieve, but is easier to breach with impunity”52 .

Considering the international aspect of antitrust laws, there are several organizations that promote convergence 53 and harmonization among domestic antitrust regulations. Most relevant examples are the ICN and the OECD. There are also private organizations that foster the development of antitrust rules, as the American Bar Association (“ABA”), the Fordham Corporate Law Institute,54 the American Antitrust Institute, the CUTS Center for Competition, Investment & Economic Regulation, and the Institute for Consumer Antitrust Studies.

According to Alexandr Svetlicinii, the proposed recommendations from ICN are commonly adopted by the participating authorities (the participating member are the authorities, not the countries’ governments)55. The author indicates that a 2004 ICN Report indicated that the recommendations of ICN’s working groups were adopted by 90% of the involved jurisdictions. Simon Evenett and Alexander Hijzen identified several characteristics of countries and authorities that may shape the susceptibility of conformity of national merger control regimes with ICN recommendations 56

However, even though such a harmonization could be a good alternative to the problem of different outcomes from the different authorities’ assessment, it does not address the criticism regarding different procedural issues and the costs involved in multi-jurisdictional transactions57. This is so because, even if the authorities adopted same criteria, methodology and standards of analysis, the involved parties would still need to file the transaction in each of the applicable jurisdictions. Therefore, costs related to filing fees, external expenses with lawyers and economists in each country and the amount of information needed to each authority would probably not be reduced.

## FTC Advantage CP

## Neoclassical Economics K

#### No link---Paul is a criticism of neoclassical market assumptions, our argument isn’t that competition and economic growth should be measured by markets, but that it’s the most causal, explanatory variable for solving our impacts. Antitrust solves because it disrupts neoclassical market assumptions.

Philippe Aghion 21. Professor of Economics at INSEAD. He is also a Professor at the College de France, a visiting professor at the London School of Economics and a fellow of the Econometric Society and of the American Academy of Arts and Sciences. “Rethinking Capitalism: The Power of Creative Destruction.” <https://knowledge.insead.edu/economics-finance/rethinking-capitalism-the-power-of-creative-destruction-16821>.

Let’s face it: Capitalism has a bad reputation these days. While it is still seen as the “least awful” of alternatives, many accuse it of having led to exploding inequality, disastrous climate change and fractured societies. For some, these consequences are enough to advocate abandoning it altogether.

In The Power of Creative Destruction, economists Philippe Aghion, Céline Antonin and Simon Bunel argue that abolishing capitalism is not the solution. Historically, a market economy has proved to be a formidable engine of prosperity, enabling societies to develop in ways that were unimaginable even two centuries ago. However, market forces cannot be given free rein. The state and civil society both have a role to play in guiding the forces of disruptive innovation that underpin growth.

Creative destruction refers to the process by which innovations continually displace existing technologies and ways of doing things. New firms continually step up to the plate and new jobs replace obsoleted ones. In sum, the new destroys the old. This constant innovation is the driving force of capitalism and the catalyst of long-term growth. However, feats of innovation aren’t heaven-sent. They are achieved by entrepreneurs motivated by the prospect of dominating over a given market. The problem is that once they manage that, they often use their might to maintain the status quo and block the natural Darwinian process.

The originator of the notion of creative destruction, Joseph Schumpeter (1883-1950), was pessimistic about the future of capitalism. He believed that powerful incumbents – think conglomerates – would eventually dominate every sector. By stifling competition, they would kill innovation and growth softly. On the strength of about 30 years of global research that yielded the body of theory and empirical evidence that Schumpeter lacked, Aghion and his co-authors are unquestionably more upbeat. Advocating a fighting optimism, their book shows there are ways to reward growth-creating innovators and, at the same time, prevent them from entrenching themselves.

Revisiting the main enigmas of economic history

History has left us with some enigmas about economic growth. Among them: Why did economic growth suddenly pick up from 1820, after being negligible for close to 2000 years? Why do some countries start to converge to the standards of living of developed countries but sputter mid-way? And why have technological revolutions so far not brought about the mass unemployment feared by the Luddites in 19th-century England and by John Maynard Keynes in 1930? The body of knowledge accumulated around creative destruction helps us solve all these enigmas and more, as shown by the following three vignettes.

The 1820 starting point of growth: The world per capita GDP was the same in the year 1000 as in the year 1 CE. From there, the average rate of yearly growth barely reached one twentieth of 1 percent. But in 1820, in the United Kingdom and then in France, economic growth suddenly picked up, reaching about 0.5 percent per year for 50 years. Why? Because of the convergence of four factors: greater transfer of knowledge (e.g. the Encyclopaedists, the weakening of overprotective guilds), effective protection of property rights, healthy competition between European nations (inventors not welcome in one country could take their brilliance elsewhere) and the development of financial instruments that dynamised innovation and risk taking.

The middle-income trap: Developing countries must implement investment-focused policies to catch up initially, but at some point, they must switch to innovation-promoting policies to compete within the world of developed economies. A crisis can help with that painful transition to a more Darwinian setting. If not, the nation’s growth stalls as the well-fed incumbents guard their turf and block new competition.

Technology as the end of jobs: The fear that machines will destroy human jobs began long ago. When William Lee presented a stocking-knitting machine to Queen Elizabeth I in 1589 (in order to get a patent), she refused, declaring: “Consider what thy invention could do to my poor subjects. It would assuredly bring them ruin by depriving them of employment, thus making them beggars.” However, we now have data to show that the impact of automation on jobs is not only positive, but it also increases over time. A 1 percent increase in automation in a plant today increases employment by 0.25 percent after two years and by 0.4 percent after ten years. This effect holds even for unskilled manufacturing workers. Automation generates productivity gains that benefit employees, consumers (via lower prices) and firms (via increased sales).

Questioning some common bits of wisdom

Creative destruction also gives us a useful lens through which to assess policy prescriptions. For instance, some believe that taxation is the sole method of making growth more inclusive. Along the same line of thinking, some insist we should tax robots, especially since they will (allegedly) create mass unemployment. Others view a complete ban on growth as the best way to fight climate change.

Aghion and his co-authors believe these policies are misguided and explain why in the book. Taxation is but one economic tool; it is just as important for the state to promote innovation to boost social mobility and raise standards of living. The focus should be on investing in education and science. More recently, the state has emerged as an investor in innovation. This is a smart move.

Taxing robots, or any new technology for that matter, goes against innovation. The state should always preserve the free entry of goods and services in the market. Will some jobs be displaced in the process? Of course, and that is why creative destruction has an important caveat, or perhaps corollary: The state must insure employees against the potentially adverse consequences of job loss.

Zero or negative growth is not the best response to climate change. Green innovation is. However, a laissez-faire economy doesn’t move spontaneously towards green innovation. On the contrary, polluting firms will naturally prefer to innovate in the same polluting technologies. So, the state must provide incentives to redirect innovation efforts. Several levers can achieve this: a carbon tax, subsidies for green innovation, technology transfers to developing countries and carbon tariffs to discourage pollution havens. Civil society also has an important role to play to persuade firms to pursue green technologies.

Rethinking the future of capitalism

Lastly, the creative destruction paradigm helps us rethink capitalism. The Covid crisis has revealed the pitfalls of capitalism, which turn out to be very different across countries. The United States has a great model of innovation, but its social model is broken. Europe (broadly) offers social welfare, but its innovation model is inadequate. The book explains how we should work towards a model of capitalism that combines the dynamism of the US innovation with the social protections afforded by a country like Denmark.

Despite Schumpeter’s initial gloom, capitalism isn’t doomed. There are ways to overcome its apparent curse. But just like innovation isn’t heaven-sent, fixing capitalism will require coordinated action, based on a solid understanding of the determinants of economic growth and prosperity.

States should pursue two types of policies simultaneously: protecting intellectual property rights on innovation on the one hand and safeguarding competition on the other. Merger and acquisition policies should also take into account the impact on innovation. The entry of smaller, potentially more innovative players, cannot be left to the good will (or distraction) of the incumbents.

Optimal innovation policies will never please the firms that have already achieved market dominance. Proper separation of power, supported and enforced by a strong civil society, is required to ensure minimal collusion between behemoth firms and the executive power. Think of it as a “magic triangle” that includes the state, the market and civil society acting as a watchdog.

Does fixing capitalism somehow involve getting rid of the 1%? The short answer is no. While innovation does help the top 1% get richer, it doesn’t impact the Gini coefficient (an index of wealth inequality within a nation). This is because innovation lifts society as a whole through promoting social mobility. This contrasts with lobbying, which also helps the rich get richer, but does nothing for innovation on top of increasing the Gini coefficient. In sum, society can reward innovators, but should never leave them in charge of policymaking.

#### Capitalism solves the rest of their scenarios.

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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

## Pharma Good DA

#### Anticompetitive conduct in the pharmaceutical industry undermines effective and efficient innovation.

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This dramatic consolidation has remade the pharmaceutical industry. Before 1988, a robust cohort of drug manufacturers often competed across multiple therapeutic areas. This competition encouraged exploring different possible approaches for treating the same disease state as well as treatments for a wider range of health concerns, increasing the potential for innovations that might improve lives.

Although this marketplace was better for innovation, drug companies were drawn to merging because of the lure of increased market power, improved synergies, larger economies of scale and more diverse product portfolios.

Abrupt changes to the environment surrounding the pharmaceutical industry also encouraged consolidation. In the late 1980s, widespread deregulation at both the state and federal level may have facilitated an uptick in mergers, particularly as companies with expiring drug patents sought to make up for their revenue losses by acquiring other profitable drugs.

The second merger wave beginning around 1996 can be traced in part to another external shock, as globalization spurred firms to join forces to reach more potential markets. Similar to the first merger wave, “patent cliffs,” in which many of a company’s drugs were set to lose their lucrative patent monopoly around the same time, also helped push firms to combine forces.

But the newly consolidated pharmaceutical industry actually stifled innovation. In the period following merger waves one and two, the industry generated fewer new molecular entities each year compared to pre-merger levels. Merged drug companies also spent proportionally less on research than their non-merged competitors.

Consolidation also enabled drugmakers to directly quell competition through what were known as “killer acquisitions,” in which they acquired innovative peers solely to stop potential competition. Moreover, with the assistance of pharmacy benefits managers, newly giant pharmaceutical firms could leverage their dominant position with one type of drug to suppress competitors for another one of their drugs, or they could use the combined power of multiple drugs to shore up a waning monopoly position. Both of these practices could block cheaper drug competitors from reaching patients, inhibiting access and affordability.

In short, consumers were the losers from the two waves of drug company mergers. They confronted higher prices and fewer choices — and saw companies exploring fewer paths that might produce breakthroughs. To make matters worse, around 2010, another wave of mergers began.

#### Biden executive order thumps.

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On Friday, July 9, 2021, President Biden released an Executive Order “to promote competition in the American economy” and to “to reduce the trend of corporate consolidation” (the "Order"). As part of this Order, the Biden Administration **specifically targets competition** in the pharmaceutical industry and sets forth policies to **combat the high cost of prescription drugs.** As the Administration’s first major policy initiative on drug pricing, this Order may serve as a preview of the Administration’s drug pricing reform agenda. Canadian Drug Importation Among the more controversial provisions, the Order supports **importing drugs from Canada** as an effort to reduce prescription drug costs. The Order calls on the Food and Drug Administration (FDA) to work with States seeking to import drugs under Section 804 of the Federal Food, Drug, and Cosmetic Act, known as the Section 804 Importation Program (SIP). FDA, under the Trump administration, previously implemented regulations and guidance to States and other entities seeking to import drugs from Canada through the SIP. In November 2020, Florida submitted a proposal to FDA to begin the importation of a limited number of drugs. HHS Plan to Address Drug Pricing Rather than calling on Congress to address drug pricing, President Biden is requesting that the Department of Health and Human Services (HHS) develop a plan to address drug pricing by the end of the summer (Drug Pricing Plan). Specifically, within 45 days of the release of the Order, the HHS Secretary must develop and submit to the White House, a Drug Pricing Plan to: Continue the effort to combat excessive pricing of prescription drugs and enhance domestic pharmaceutical supply chains; Reduce the prices paid by the Federal Government for such drugs; and Address the recurrent problem of price gouging. Provisions Related to Generics and Biosimilars The Order also includes multiple provisions to increase the availability of generics and biosimilars. It specifically encourages the Federal Trade Commission to use its **rulemaking authority to combat unfair anticompetitive conduct.** In the Order’s press release, the Administration makes it clear that they are targeting “pay for delay” arrangements or other agreements to delay the market entry of generic drugs or biosimilars.

#### No link---antitrust doesn’t deter innovation.

Tyler J. Klein 16. Lawyer. “Antitrust Enforcement Against Pharmaceutical Product Hopping: Protecting Consumers or Reaching Too Far?” Saint Louis University Journal of Health Law & Policy. Volume 10; Issue 1; Article 12. 2016. https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1058&context=jhlp

In response to these arguments, opponents assert that antitrust enforcement impedes innovation in the pharmaceutical industry.147 The idea of chilling innovation and deterring the development of new, potentially life-saving drugs is certainly concerning. However, this argument is less concerning than it sounds. When submitting its Amicus Brief in support of Plaintiff-Appellee State of New York in the Second Circuit Actavis case, the AAI addressed this argument. First, the AAI asserted that no empirical evidence existed showing that antitrust scrutiny of product hopping deters innovation.148 Moreover, the AAI further asserted that antitrust scrutiny of product hopping actually increases innovation.149 Without antitrust scrutiny of product hopping, brand- name companies will invest in making minor alterations to products to extend the patent, rather than investing in research for new, innovative drugs.150 Indeed, one study found that “[b]rand-name firms have sought increasing recourse to ancillary patents on chemical variants, alternative formulations, methods of use, and relatively minor aspects of the drug.”151 Essentially, immunizing brand-name pharmaceutical companies from antitrust liability encourages them to spend time and resources in order to find ways to make insignificant changes to current drugs in order to preserve the patent, instead of using time and resources to develop the next innovative drug. In its Brief as Amicus Curiae filed with the district court in Mylan, the FTC bolstered this argument by asserting: “The threat posed to existing brand drugs by generic competition can incentivize the brand company facing dramatic loss of sales to develop new and innovative drugs that benefit consumers.”152 Notably, the FTC recently filed a Brief for Amicus Curiae in support of Mylan in its appeal to the Third Circuit.153 In sum, there is no evidence that antitrust regulation of product hopping slows down innovation by brand-name pharmaceutical companies. Rather, regulation actually encourages innovation, as the competition from generics causes brand-name manufactures to innovate new products and prevents them from spending resources on insignificant changes to extend patents.

#### The link is empirically denied---pharma companies have said any legislation in the past decade will destroy innovation and they’ve been wrong every time. Their authors are paid off.

Michael A. Carrier & Genevieve Tung 19. Professor of law at Rutgers Law School and an associate director of the Rutgers Law Library. “The industry that cries wolf: pharma and innovation.” <https://www.statnews.com/2019/09/26/innovation-boy-cried-wolf-pharma-industry/>.

But we write to raise a different point: Claims by big pharmaceutical companies (and the organizations they fund) that legislation addressing product hopping (or pay-for-delay settlements or sample denials) would harm innovation should be taken with a grain of salt. As HHS Secretary Alex Azar lamented, the industry incessantly claims that “if one penny disappears” from its profit margins, “American innovation will grind to a halt.” These “tired talking points,” he said, emerge each time Congress considers legislation affecting the industry.

The outcries trace back at least to 1961, when Eugene N. Beesley, the president of Eli Lilly, responded to the Drug Industry Antitrust Act (which sought to rein in high prices and impose licensing on drug manufacturers) before a subcommittee of the U.S. Senate. Speaking on behalf of the Pharmaceutical Manufacturers Association, Beesley warned that deletion of patent protection would “increasingly dilute the intense competition for superiority in discovery and manufacturing,” which would be “a tragic result in an area so vital to the public health.”

Even the landmark legislation that became the Hatch-Waxman Act was subject to industry threats that “you get what you pay for” and that if “Congress and the American public are unwilling to make a substantial investment in new drugs, they will get very little in return [and] innovation will dry up.”

The ominous warnings have continued ever since. Of the countless examples that could be offered, here are eight from the past 15 years.

In 2004, PhRMA claimed that modifications to the Hatch-Waxman Act “would undermine the act’s few critical protections for innovator [IP] rights,” leading to “less innovation [and] fewer new drugs to enhance treatment.”

In 2013, PhRMA criticized the House’s passage of the Innovation Act, which sought to curb the misuse of patent enforcement, voicing “concerns that it would undermine the ability of patent holders to enforce their rights, … potentially decreasing the value of patents and weakening incentives for innovation.”

Also in 2013, the president and CEO of PhRMA testified that European cost-containment measures “raise serious concerns” about EU member states’ “commitment to adequately reward innovation.”

Yet again in 2013, a PhRMA representative criticized legislation targeting pay-for-delay settlements since a presumption of illegality “would significantly undermine the value of patents that are the cornerstone of pharmaceutical innovation.”

In 2015, PhRMA worried that state legislation capping drug prices would “have a devastating impact on medical innovation.”

The same year, the organization referred to post-grant proceedings that allow patents to be reviewed as a “death squad” that “would impact our ability to develop new medicines that treat some of the most devastating diseases.”

In 2016, PhRMA lamented that the president’s FY17 budget mandating information disclosure would “undermine our competitive … incentives for innovation.”

And in 2019, PhRMA warned that “march-in rights” allowing the government to compel the granting of patent licenses if it funded some of the research would “jeopardize U.S. innovation.”

In the classic Aesop fable, the first two times the young shepherd cried wolf, the villagers came to help him. But after that, they stopped coming.

Big Pharma has cried Innovation Wolf every time Congress seeks to address its shenanigans. And the legislators keep coming to defend it. That has to stop. It is past time for the industry to be called to account on using its get-out-of-jail-free innovation card to avoid reasonable legislation.

As we get closer to the finish line of passing legislation addressing product hopping and other games, the cries about threats to innovation will grow louder and more urgent. But the industry’s history needs to be remembered. Consumers’ lives depend on it.

#### No synthetic biology impact.

Jefferson et al. 14—Faculty in the Department of Social Science, Health, and Medicine at King’s College London [Catherine Jefferson, Filippa Lentzos, and Claire Marris; “Synthetic biology and biosecurity: challenging the ‘myths,’” *Frontiers In Public Health*, Vol. 2, Art. 115, August, Emory Libraries]

Challenges to Myth 1

These concerns are based on the assumption that synthetic biology already has made it, or shortly will make it, easy for anybody to “engineer biology.” The underlying vision is one where well-characterized biological “parts” can be easily obtained from open-source online registries and then easily assembled, by people with no specialist training and working outside professional scientific institutions, into genetic “circuits,”“devices,” and “systems” that will reliably perform desired functions in live organisms (1, 2). However, this does not even reflect current realities in academic or commercial science laboratories, where researchers are still struggling with every stage of this process (19, 20).

Moreover, synthetic biologists who participated in our recent workshop (11) argued that although historical experience with other forms of (non-biological) engineering demonstrate that dependence on the craft skills of a small number of highly trained individuals is reduced for some parts of the production process, usually by standardization and mechanization, this does not mean that skills become irrelevant or that all aspects of the work become easier. Specialized expertise, teamwork, large infrastructures, complicated machinery, advanced technology, trouble-shooting, and organizational factors continue to be required when a design and engineering approach develops. Thus, even though the engineering approach of synthetic biology aims to make processes more systematic and more reproducible, this will not make it easier for anybody to engineer biology. Indeed, some aspects of the work may become more complex, and new skills may be required.

A useful analogy to aeronautical engineering was used at the workshop to illustrate this. Planes are built from a large number of well-characterized parts in a systematic way, but this does not mean that any member of the general public can build a plane, make it fly, and use it for commercial transportation. Thus, it is too simplistic to suggest that if synthetic biology becomes an engineering discipline it will necessarily become easier for anybody to engineer biological systems, including dangerous ones. More care needs to be taken in the interpretation of statements about how synthetic biology will lead to “de-skilling” and “make the engineering of biology easier.”

Furthermore, the experiences of iGEM teams tend to demonstrate the challenges of successfully performing synthetic biology experiments, and demonstrate the ongoing need for guided instruction and collective expertise. iGEM is the annual International Genetically Engineered Machine competition, which brings together undergraduate students from across a range of disciplines to work collaboratively to design and build biological systems and operate them in living cells. The iGEM competition is linked to the parts-based approach to synthetic biology through its contributions to the Registry of Standard Biological Parts, and provides a proof-of-principle for the synthetic biology agenda (21).

iGEM teams typically receive considerable guidance from senior faculty members and, while iGEM is a collaborative exercise, biologically trained students still tend to be the ones who have the central roles in daily laboratory activity. Balmer and Bulpin (22) describe the collaborative experiences of one undergraduate iGEM team:

Over the course of the project, as time pressures became more significant, it became natural, when assigning the activities of the day, for them to conduct the procedures in which they had each become experts, as otherwise it would require them teaching someone else. [. . .] As one of them explained:“From the start I had the idea that I would take a main role in modelling but also get some experience in the lab. However, I quickly gave up on lab work after the first few weeks because the time frame for the project we had was not enough to learn the basics needed for the lab and apply them.” Owing to these contextual, material specificities of the laboratory and modelling work, the sub-teams were quickly separated by knowledge, time and space [(22), p. 14, emphasis added].

Cockerton (23) reported similar findings from her ethnography of two iGEM teams:

both teams found that many protocols were not streamlined as descriptions of synthetic biology often present. There was a great deal of tedious work, which involved small volumes of clear liquid and lots of waiting time. Many cycles of failed experiments had to be repeated (p. 306).

[. . .]

the reality of everyday design-experiment-fail-redesign (and so on. . .) cycles serves as a sobering reminder that the foundations of synthetic biology were not then (when I was in the field in 2009), and are not yet (2011), stable. Many experiments don’t work out as planned because many BioBricks from the Registry don’t function reliably. Presently, engineering that is accomplished with BioBricks in one lab and described in a standard fashion, certainly does not guarantee that the same result is reproducible in another lab (p. 307–308).

These in-depth analyses of synthetic biology in action illustrate the importance of collective expertise in synthetic biology research and the challenge posed by tacit knowledge, especially for wet lab work. Members of iGEM teams have or acquire distinct specialist sets of knowledge and skills, which are then applied to the collective project. Training by experienced professional researchers, and specialist skill sets acquired through trial and error, are still highly relevant to the success of synthetic biology projects.

## Infrastructure DA

#### Won’t pass---Biden’s PC fails.

Sarah Ferris 10/28. Covers the House for POLITICO’s Congress team, focusing on the Democratic caucus. She has covered Capitol Hill for six years, including stints focused on budget and health care policy for POLITICO Pro and The Hill newspaper. “Dems punt House infrastructure vote in blow to Biden agenda.” <https://www.politico.com/news/2021/10/28/biden-house-democrats-517416>.

The move came after progressives refused to relent in their opposition to the $550 billion infrastructure bill amid a standoff over Democrats’ separate, party-line $1.75 trillion social spending measure. It followed a visit to Capitol Hill by President Joe Biden, who personally asked House Democrats for their support on both the infrastructure plan and the separate social policy framework.

But Speaker Nancy Pelosi and her leadership team were ultimately unable to win over dozens of dug-in liberals in time for a Thursday evening vote. House liberals said they want to review the legislative text of $1.75 trillion social spending legislation the White House outlined Thursday and get a commitment of support from centrist Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — something the two have not outright given.

Despite an aggressive whipping campaign from Democratic leaders, as many as 30 liberal Democrats threatened to block the roughly $550 billion Senate-passed infrastructure bill, according to multiple people familiar with the vote-tallying operation. As House Democrats headed home for the weekend in defeat, many were infuriated and left wondering how they had stumbled yet again, pointing fingers within their own party.

"I tried to tell anybody who would listen that we didn't have the votes" among progressives to pass the infrastructure bill without fully fleshed-out social spending legislation moving alongside it, Congressional Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.) told reporters.

#### Senate antitrust bill thumps.

Benjamin Din, 8-12-2021, "Senators set stage for antitrust fight," POLITICO, https://www.politico.com/newsletters/morning-tech/2021/08/12/senators-set-stage-for-antitrust-fight-797122

SENATE SHARPENS ITS ANTITRUST FOCUS — The Senate is moving on its antitrust response, following the House Judiciary Committee’s approval of its own antitrust package. But senators are taking a more targeted approach that could make their bill easier to actually get to Biden’s desk.

Sen. Richard Blumenthal (D-Conn.) on Wednesday introduced the Open App Markets Act, as Leah reported for Pros. The new bill would target Apple and Google's "gatekeeper power" over the smartphone market, forcing the tech giants to allow developers to use alternative app stores and to tell consumers about where they can purchase software for a cheaper price online. Sens. Marsha Blackburn (R-Tenn.) and Klobuchar, who chairs the Senate Judiciary antitrust subcommittee, are cosponsors of the legislation.

— Not quite a companion bill: The Senate bill does have some overlap with a House bill introduced by Rep. David Cicilline (D-R.I.), who chairs the House Judiciary antitrust panel. However, Cicilline’s legislation is broader, applying to everything from app stores to advertising to logistics, and would ban companies from prioritizing their own products over their competitors’.

Companion legislation from the House is currently in the works. Senators are still working on companions for the House’s proposals, but those bills aren’t expected until later in the fall.

#### Won’t pass---Biden isn’t pushing it, distrust, VA election.

Heather Caygle et al 10-29-2021, with SARAH FERRIS and OLIVIA BEAVERS "Weary Dems keep reliving Infrastructure Week," POLITICO, https://www.politico.com/news/2021/10/29/democrats-infrastructure-week-517487

House liberals left the Capitol triumphant on Thursday night after once again scuttling a major vote. Every other Democrat was fuming. For the second time in less than a month, Speaker Nancy Pelosi and her leadership team had to delay a vote on Senate-passed infrastructure bill amid progressive opposition, denying President Joe Biden a much-need win as Democrats’ bigger, $1.75 trillion social spending plan also remains in limbo. “I think it’s wholly apparent that today was not a success,” said Virginia Rep. Abigail Spanberger, whose state has a high-stakes gubernatorial showdown Tuesday that Democrats were hoping to boost with the infrastructure vote. “Because people choose to be obstructionists, we’re not delivering these things to my state or to the rest of the country,” the swing-district Democrat added. “I guess we’ll just wait because apparently failing roads and bridges can just wait in the minds of some people.” Democrats slunk out of the House chamber embarrassed — furious at the liberals who dug in and a White House that refused to pressure them to relent — and openly fretting about the long-term repercussions, given the tough climb they face in the midterms. Progressive leaders are predicting the party will work out its differences and pass both bills in the House within days. But it’s a far cry from what top Democrats had hoped to deliver ahead of a critical week for the party. “If I'm going to be honest, yeah, I’m worried about it,” said Rep. Gregory Meeks (D-N.Y.). “There’s a lot on the line here — a lot on the line. … We fill our cup up by getting stuff done. It’s not over.” The party started with a clear plan for this week: send a $550 billion infrastructure bill to Biden’s desk that would start his foreign trip with a marketable victory and offer a much-needed boost to Virginia Democratic candidate Terry McAuliffe ahead of a nail-biter gubernatorial election Tuesday. Instead Democrats are going home with nothing to show but a short-term extension of highway and transit programs and promises to reconvene next week and try again. Senior party members insist they had good reason to believe this week would be different from late September, when another wall of liberal opposition forced Pelosi to punt an infrastructure vote. This time they had a Biden-blessed deal, a chunk of legislative text and a full-throttle whipping operation. They still couldn’t overcome the trust gap between the party’s liberals and their moderate colleagues across the Capitol: Sens. Kyrsten Sinema (D-Ariz.) and Joe Manchin (D-W.Va.). “All they need to do is one simple thing, which is to affirm they are in agreement with the framework. They just need to publicly announce it. Clearly they aren’t willing to do that, which is saying a lot,” said Rep. Ruben Gallego (D-Ariz.), who has not ruled out a primary challenge to Sinema. The House’s departure Thursday night virtually guaranteed there would be no major vote on Biden’s agenda ahead of McAuliffe’s election on Tuesday. If he loses, many Democrats worry that could spell doom for their already-teetering domestic agenda as the party’s two wings continue to bicker over the contours of their $1.75 trillion spending package. “Our whole argument as Democrats is premised on the idea that we're going to make things better in real life. As opposed to the other side, which just constantly lies and seems to live in a world of misinformation and fantasy,” said Rep. Conor Lamb (D-Pa.). “But if we're going to win that argument," he added, "we actually have to do the things we said we're going to do.” While the rest of the caucus seethed, progressives defended their refusal to support the infrastructure bill amid lingering uncertainty about Sinema and Manchin's commitment to the social spending framework Biden unveiled Thursday morning. “I told anybody that would listen that we did not have the votes for [an infrastructure] vote tonight,” said Congressional Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.). Jayapal went on to say that Biden did not explicitly ask for a vote on the infrastructure bill when he visited the Hill Thursday morning — which many on the left took as a tacit green light to continue opposing Democratic leadership’s push for a vote until they were ready. Biden’s lack of a clear demand for a Thursday vote may have had the unintended effect of emboldening liberals, giving them political cover to tank an infrastructure bill that Pelosi and other leaders were whipping. “The speaker did, but the president did not” ask for Democrats' infrastructure vote, Jayapal said. “The president said he wants us to pass both bills and that this coming week was going to be critical for that. We will deliver both these bills to him, from the House, next week.” Senior Democrats were privately frustrated at Biden’s lack of direct call to action, and some sought to convince the White House to further clarify his position throughout the day, with no success. “Had the president led us down that hallway to the House floor this morning ... I think it would have been close,” said Rep. Dean Phillips (D-Minn.). “If the vote was kept open a long time, I think with Republican votes it would have passed.”

#### Winner’s win---Biden passing tough bills expands his political capital.

Stankiewicz 1/20/21 (Kevin - associate reporter for *CNBC.com*, “Sen. Chris Coons says Biden has ‘practical’ bent, hopes for cooperation in Congress,” https://www.cnbc.com/2021/01/20/biden-inauguration-day-live-updates-stream.html)

Democratic Sen. Chris Coons told CNBC he is hopeful President Joe Biden’s plans to address the Covid-19 crisis could set the tone for bipartisan cooperation in Washington. “I think it’s possible for Joe Biden, by responding to this pandemic in a competent and caring way, to actually build his political capital, to surprise the American people by showing that he and [GOP Sen.] Mitch McConnell, that the leaders in the House and the Senate, can actually work together to solve problems,” said Coons, a close ally to Biden and his fellow Delawarean. In an interview on “Power Lunch,” Coons said most Americans are fed up by inaction and partisan bickering from Congress. “Joe is someone who has never forgotten where he’s from, who has a practical, common-sense bent and who sees the suffering of the American people.” “He’s going to give us a chance to move forward, boldly, together, and I pray that the Congress takes him up on it,” Coons said.

#### Thumpers outweigh the plan---Afghanistan, border crisis, filibuster, welfare, inflation, and voter approval. No shot he passes infrastructure.

Colin Reed 10/30. Staff Writer at Fox News. “Colin Reed: If McAuliffe falls short in Virginia, Biden's current agenda will also be in jeopardy.” <https://www.foxnews.com/opinion/mcauliffe-virginia-biden-agenda-colin-reed>.

President Joe Biden and his congressional majorities have precious little to show for their first nine months in power. He lacked the political capital to push his own party to get on board with a bipartisan infrastructure bill that received 19 Republican votes in the Senate over the summer - no easy task in these polarizing times.

Making matters worse for Biden and crew is they have somehow managed to offend voters across the spectrum.

The right is fuming about the chaos at the southern border and the humiliation at the withdrawal in Afghanistan.

The left is mad at the continuation of the filibuster and Democrats’ failure to move forward on their cockamamie schemes implementing a cradle-to-grave, European style welfare state.

At this point in the Obama presidency, the "stimulus" had been passed and health care negotiations were heating up – bad policies to be sure, but galvanizing issues for liberals nonetheless.

Perhaps most concerning for Democrats should be Biden’s standing among voters who are independent of any party affiliation. According to Gallup, only 34 percent of independents approve of Biden’s job performance, a steep fall from 61 percent in February.

The decline coincides with across-the-board inflation and increases in the cost of living heading into an uncertain Christmas season. These are not esoteric issues that cut along partisan or ideological lines. Everyone is concerned about the ability to afford functions that impact every facet of everyday life.

#### No grid impact---it’s overhyped.

Freedberg 14 (Sydney J, “Cyberwar: What People Keep Missing About The Threat,” Jan 6, <http://breakingdefense.com/2014/01/cyberwar-what-people-keep-missing-about-the-threat/>, CMR)

**Cites:**

--Peter W. Singer – former director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program

--Allan A. Friedman – Research Scientist at the Cyber Security Policy Research Institute at George Washington University's School of Engineering

**Singer and Friedman** also **do a valuable service** in **beating back the hype** **about “Cyber Pearl Harbors”** **and “Cyber 9/11s” or the US suffering countless millions of “attacks.”** **Those alarmist statistics lump together everything from a virus easily stopped by** someone’s **firewall** to credit card theft **to the loss of secret schematics for the F-35** stealth fighter. **Those “attacks” vary from trivial, to significant losses** for one particular business, to actual matters of national security, **but none of them does as much damage as a good old-fashioned bomb**, they argue. **Even if hackers shut down the** national **electrical grid for weeks** on end, bad as that would be, **it wouldn’t be as bad as a single nuclear explosion**. “**It’s** a lot **like ‘Shark Week**,’” Singer said about the overhyped dangers. “**Squirrels have taken down the power grid more times than the zero times hackers have**.” There’s lots of talk about how the attacker always has the advantage in cyberspace, he told an audience at Brookings this afternoon, but “**a true cyber offense, an effective one**, a Stuxnet style [attack] **is** something **quite difficult**.”

# 1AR

## Inequality

#### 6. Worker suppression hurts growth, prices, and innovation.

Eric A. Posner 8/13/21. Kirkland & Ellis Distinguished Service Professor at University of Chicago. How Antitrust Failed Workers. Oxford University Press, 2021.

The economic consequences of labor market power are analogous to those of product market power. Product market power has two wellknown effects. It redistributes from consumers to the firm: consumers must pay more for products, and the firm earns greater profits at their expense. And it creates waste or deadweight loss. Some consumers would be willing to pay the efficient, marginal cost price that the firm would have charged in a competitive market but are not willing to pay the higher price the monopolist chooses to charge.

Similarly, monopsony power has two effects. It redistributes from workers to employers by lowering wages. And it creates waste: some workers would have been willing to work for the employer if they had been paid their full marginal revenue product but will quit if they are paid the marked-down wage the monopsonist offers. This leads to increased unemployment or nonemployment as workers find prevailing wages unacceptable and exit the labor force or refuse to take available jobs. Economic output also declines.

Monopsony power creates other negative effects as well. First, to the extent that the degree of monopsony power differs across employers, it will also lead to misemployment: workers may be more productive at employer A, which has a lot of labor market power, than at employer B, which has a little. But B may offer higher wages because of its limited labor market power. The worker may thus choose to work at B, lowering the productivity of the economy. Misallocation may be particularly severe because of the two-sided matching problem. If matches between workers and firms generate specific benefits, monopsony can distort which firms match which workers, which will lower the allocative efficiency of the market.

Second, employers will often cut benefits, rather than cut wages, to take advantage of workers who are locked into the job. The firm has no need to retain these workers and thus may wastefully degrade conditions of work these “stuck” workers particularly value, instead catering only to the workers the firm is worried about losing.26

Third, monopsony raises prices for consumers. This may seem counterintuitive: won’t lower wages to workers be passed through to consumers as reduced prices? That argument is often made as a defense of monopsony power.

In fact, however, this argument is wrong. To see this, note that if firms employ fewer workers, they will produce less output, resulting in higher prices. The labor cost savings accrue to the employer itself (or its shareholders), not to the buyers of its goods. Those buyers will pay a price that is determined by the structure of the product market, not the labor market. So, for example, if the employer is also a monopolist in the product market, it will charge the buyers the monopoly price—which is determined by how much buyers are willing to pay. And if the product market is competitive, the employer will charge prices for its goods that are no higher than the competitive price—with its competitors taking up the slack as the employer itself will produce less given its small workforce. The technical explanation is that while the firm lowers wages to workers, the cost to the firm of hiring workers rises as the firm now considers the fact that, when it hires an additional worker, it also will pay its other workers more. When a monopsonist hires a single worker, it must increase wages for all its workers. (Recall that employers cannot easily wage-discriminate.)27 If this seems paradoxical, note that it is merely the flip side of a well-understood feature of monopolistic control of product markets: that a monopolist produces fewer products and charges a higher price for them than does a competitive firm. Monopoly and monopsony are two sides of the same coin, and both harm labor and product markets.

Fourth, and precisely for this reason, monopsony power reinforces and exacerbates monopoly power. In fact, both can be seen as two alternative ways for the owners of capital to squeeze workers and thus reduce the returns to productive work and the output of the economy. The markdown on wages caused by monopsony and the markup on prices caused by monopoly are akin to taxes: payments that ordinary people must pay in order to go about their daily life as producers and consumers. However, the payments go not to governments to fund programs, but to firms and, ultimately, investors. And the payments do not spur investment and raise economic growth because they depend in the first place on the willingness of managers to leave capital idle to obtain market power, while driving workers out of the workforce and onto taxpayer-financed relief programs.

#### 2. Labor market inequities create slow and unstable growth---COVID proves.

Joseph E. Stiglitz 21. Joseph E. Stiglitz is an economist and professor at Columbia University. He is the co-chair of the High-Level Expert Group on the Measurement of Economic Performance and Social Progress at the OECD, and the Chief Economist of the Roosevelt Institute. He has served as chief economist of the World Bank and chairman of the Council of Economic Advisers. He was awarded the Nobel Prize in economics in 2001“Fostering More-Competitive Labor Markets” Inequality and the Labor Market: The Case for Greater Competition. Brookings Institution Press. (2021) https://www.jstor.org/stable/10.7864/j.ctv13vdhvm.6

Why It Matters

It should be fairly obvious why these imperfections in the labor market matter so much: one of the most disturbing aspects of growth in the United States in recent decades is the growing inequality (see, e.g., Ostry, Berg, and Tsangarides 2019; Stiglitz 2012, 2019; and a rash of other books on the topic). Most of the gains in the economy have gone to the top 10 percent, the top 1 percent, and the top 0.1 percent. Some of the growing inequality has to do with increases in wage disparity—known as labor market polarization. But much of it has to do with the decreasing share of national income going to workers.8 This is where the decreasing market power of workers and the increasing market power of corporations comes in. This decreasing market power is more than just changes in technology or even globalization: it is also the broader changes in our economy, society, and politics—and especially the changes described earlier in this introduction and elsewhere in this volume—that have led to this growing imbalance of market power.

Research at the International Monetary Fund (Ostry, Berg, and Tsangarides 2014) and elsewhere (Ostry, Berg, and Tsangarides 2019) has highlighted the broader consequences of this growing inequality, even on economic performance. Economies that are more unequal are less stable and grow more slowly. In The Price of Inequality I explain the reasons that we pay such a high price for inequality.

The COVID-19 crisis has provided a dramatic illustration: inequalities in income translate into inequalities in health, especially in a society, like that of the United States, that relies on markets to dispense healthcare. The virus is not an equal opportunity virus—it appears to have the most devastating effects on people who have underlying health conditions. Our health inequalities are undoubtedly one of the reasons that the United States led the world in COVID-19 deaths.

Short-sighted employers did not provide sick leave and government did not require it—even when Congress seemed to recognize that workers without sick leave, who live paycheck to paycheck with virtually no money in the bank, would go to work even when they were sick. They had to work in order to survive, but that meant they helped to spread the disease. After lobbying by the large corporations, Congress decided that employers with more than 500 employees—almost half of the private labor force— were exempt from providing sick leave. With so few workers unionized, employees simply did not have the bargaining power to demand paid sick leave, personal protective equipment, or COVID-19 tests. Government should have required all these things, of course, and it had the power to do so under OSHA, but chose not to. Workers were desperate for the protection, but lacked the bargaining power to get it.

#### Monopsonies do not pay more and wages are not increasing.

Marcela Escobari 19. A senior fellow in the Center for Sustainable Development, housed in the Global Economy and Development program at Brookings, where she is leading the Workforce of the Future initiative. “The economy is growing and leaving low-wage workers behind” Brookings Institution. 12-19-19. <https://www.brookings.edu/blog/education-plus-development/2019/12/19/the-economy-is-growing-and-leaving-low-wage-workers-behind/>

Yet among workers picking up second shifts or working multiple jobs this holiday season—the cashiers, stock clerks, warehouse workers, and delivery people—the rosy economic headlines might be hard to believe. Our recent report found that **44 percent of American workers, a whopping 53 million people, earn low wages.** These workers’ median hourly wage is $10.22, and they earn annual pay of just $17,950. The sheer number of low-wage workers is **hard to reconcile** with top-line economic statistics. The declining U.S. unemployment rate, which hit 3.6 percent in October, should augur prosperity for the nation’s workers. Certainly the president is banking his reelection campaign on workers feeling the net job gains and wage growth. The gains and growth are real in the aggregate, but they **mask the longer run changes** under the surface that are splitting the labor market and **trapping low-wage workers**; their opportunity for advancement through job changes is limited. We find low-wage workers are the most likely to remain stuck in their wage bracket when they switch occupations. But even workers in the middle class are more likely to **move down** the occupational ladder than up. Low-wage work is often precarious, marked by unpredictable schedules, reduced benefits, and unsteady employment. **Growing industry concentration** and weakened unions **erode workers’ capacity to bargain for higher wages** or redress labor disputes.

## Pharma DA

#### Pharmaceuticals are the largest driver of healthcare costs.

Hannah Brennan et al 16. Law Clerk to the Honorable Theodore McKee, Chief Judge, Third Circuit. \*\*Amy Kapczynski; Professor of Law, Yale Law School. \*\*Christine H. Monahan; Yale Law School Class of 2016. \*\*Zain Rizv; Yale Law School Class of 2017. “A Prescription for Excessive Drug Pricing: Leveraging Government Patent Use for Health” 18 YALE J.L. & TECH. 275 (2016). https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1124&context=yjolt

The soaring cost of pharmaceuticals is one of the most pressing domestic policy issues in the United States today. Nearly one-fifth of the U.S. Gross Domestic Product (GDP) is spent on healthcare, and pharmaceuticals are a key expenditure.**1** In 2014, the United States spent a record $297.7 billion on pharmaceuticals, over 12% more than the previous 2 year. The 2014 increase in prescription drug spending can be attributed almost entirely to recently approved drugs that treat the Hepatitis C virus (HCV). 3 With list prices that approach $100,000 for a twelve-week regimen, 4 these new medicines have brought the issue of drug pricing roaring to the fore in policy debates. High drug prices are of enormous concern to voters, 5 policymakers, and politicians across the political 6 spectrum. High drug prices also have a significant impact on health. The new HCV drugs offer an excellent example. Potentially deadly if untreated, HCV is one of the most pressing health problems facing the United States. 7 The new drugs are far superior to previous treatments and could potentially enable elimination of the disease.8 But treating all of the approximately 5.2 million people who currently have HCV in the United States at the best reported prices offered by Gilead, the sole supplier of the most important new drugs, would cost at least $234 billion.9 Given the budget impact of these new medicines, most payors have sharply restricted their availability-covering them only for the very sickest, or refusing to cover them at all 0-instead of rapidly rolling them out. Medicaid, for example, treated only 2.4% of enrollees estimated to have HCV in 2014, despite spending more than a billion dollars on the new medicines1.1 Even with the small number treated, Gilead's earnings have been stratospheric: the company earned $36 billion from its new HCV medicines in their first twenty-seven months on the market. 12

#### Rising healthcare costs compromise 17% of GDP---the current trajectory is unsustainable and makes collapse inevitable.

Ron Howrigon 16. President and CEO of Fulcrum Strategies, Masters in Economics from North Carolina State University, has held Senior Management level positions with three of the largest Managed Care Companies in the country, including Kaiser Permanente, CIGNA HealthCare and BlueCross BlueShield, former Director of Community Medical Services with Kaiser Permanente. “Flatlining: How Healthcare Could Kill the US Economy.”

In 2010, the United States GDP was $15 trillion. The total healthcare expenditures in the United States for 2010 were $2.6 trillion. At $2.6 trillion, the U.S. healthcare market has moved up from 15th and now ranks as the 5th largest world economy, just behind Germany and just ahead of both France and the United Kingdom. That means that while healthcare was only 5% of GDP in 1960, it has risen to over 17% of GDP in only 50 years.

Over that same time, the Defense Department has gone from 10% of GDP to less than 5% of GDP. This means that in terms of its portion of the US. economy, defense spending has been reduced by half while healthcare spending has more than tripled.

If healthcare continues to trend at the same pace it has for the last 50 years, it will consume more than 50% of the US. economy by the year 2060. Every economist worth their salt will tell you that healthcare will never reach 50% of the economy. It’s simply not possible because of all the other things it would have to crowd out to reach that point. So, if we know healthcare can’t grow to 50% of our economy, where is the breaking point? At what point does healthcare consume so much of the economy that it breaks the bank, so to speak?

This is the big question when it comes to healthcare. If something doesn’t happen to reverse the 50-year trend we’ve been riding, when will the healthcare bubble burst? How bad will it be and how exactly will it happen? While no one knows the exact answers to those questions, economists and healthcare experts agree that something needs to happen, because we simply can’t continue on this trend forever.

Another way to look at healthcare is to study its impact on the federal budget and the national debt. In 1998, federal healthcare spending accounted for 19% of the revenue taken in by the government. Just eight years later, in 2006, healthcare spending had increased to 24% of federal revenue. In 2010, the Affordable Healthcare Act passed and signiﬁcantly increased federal spending for healthcare—so much so that in 2016, healthcare spending accounted for almost one-third of all revenue received by the government and surpassed Social Security as the largest single budget category. What makes this trend even more alarming is the fact that revenue to the federal government doubled from 1998 to 2016. That means healthcare spending by the federal government has almost quadrupled in terms of actual dollars in that same time period. If this trend continues for the next 20 years, healthcare spending will account for over half the revenue received by the government by the year 2035. Again, that simply can’t happen without causing signiﬁcant issues for the ﬁnancial wellbeing of our country.

## Politics DA

#### 1. Progressives and moderates block it.

Sarah Ferris 10/28. Covers the House for POLITICO’s Congress team, focusing on the Democratic caucus. She has covered Capitol Hill for six years, including stints focused on budget and health care policy for POLITICO Pro and The Hill newspaper. “Dems punt House infrastructure vote in blow to Biden agenda.” <https://www.politico.com/news/2021/10/28/biden-house-democrats-517416>.

While some liberal priorities were included in the mammoth package of climate, health care and other social policy investments, others were scrapped — and multiple House progressives vowed to block the infrastructure bill given their uncertainty about the framework's future in the Senate.

Both Manchin and Sinema publicly expressed support for the negotiations, but neither directly said they would vote for the package. Nor did they rule out a future attempt to make further changes.

Manchin, when asked where he stood, didn't offer a clear endorsement of the framework, instead saying “this is all in the hands of the House right now" and adding that he's operated "in good faith." Sinema indicated she’s warm on the potential deal, saying in a statement that “I look forward to getting this done.”

The comments from the two centrists have only exacerbated progressives’ unease as leadership pressures them to release what they see at their main leverage point — the Senate-passed infrastructure bill.

“I think everyone is very clear that the biggest problem we have here is Manchin and Sinema,” said progressive Rep. Ruben Gallego (D-Ariz.), who has not ruled out a future primary challenge to Sinema. “They don’t trust them. We need to hear from them that they’re actually in agreement with the president’s framework.”

The progressive caucus held a more than hour-long meeting after Biden left, as Jayapal signaled her group still had significant concerns after the president’s pitch. One of her members, Rep. Cori Bush (D-Mo.), said simply "no" when asked if she would vote for the infrastructure bill after the president's push. Another, Rep. Rashida Tlaib (D-Mich.), answered "hell no" on the infrastructure question.

#### 2. Votes are not ready now ---there’s been no progress.

Niall Stanage, 10-29-2021, "The Memo: Democrats stall out on brink of victory," TheHill, https://thehill.com/homenews/administration/579042-the-memo-democrats-stall-out-on-brink-of-victory

But even if that proves true, it doesn’t change the fact that the party’s roiling internal tensions are causing serious problems here and now. Speaker Nancy Pelosi (D-Calif.) early Thursday evening delayed a vote on a separate $1 trillion infrastructure measure, despite having pushed hard to pass the measure earlier in the day. The delay — the second postponement for the bill — was a rare exhibition of weakness from the Speaker, who prides herself on both her vote-counting abilities and her capacity to sway recalcitrant members of her caucus. The reasons for the impasse are numerous, but none of them are good for Democrats. Progressives are dismayed by the scale of the cuts to the social spending bill, which have seen cherished objectives like paid family leave, tuition-free community college and a clean electricity program stricken. At the same time, the two Democratic senators who have extracted concessions in scaling back the original proposal — Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — are still vague about whether they are committed to supporting the framework that Biden has outlined. Anger from more progressive Democrats has been simmering at Manchin and Sinema throughout the process, with some on the left openly accusing them of bad faith. The left is not about to extend the benefit of the doubt to the duo now. The upshot is that progressives were in no mood to back down from their position that they would not vote on the infrastructure package until they got more concrete assurances on the social spending bill. Rep. Pramila Jayapal (D-Wash.), the head of the Congressional Progressive Caucus, reiterated in a Thursday afternoon statement that members of her group would not back one bill without the other. Rep. Rashida Tlaib (D-Mich.), a member of the so-called "squad," told reporters she was “a ‘hell no’” to advancing infrastructure without certainty on the social spending bill. Another "squad" member, Rep. Ayanna Pressley (D-Mass.), tweeted: “A deal is a deal. These bills move together.” The vote delay amounted to another moral victory for the left. But it also came as unwelcome news to Biden, who had wanted to shepherd a confirmed agreement home before departing for a transatlantic trip that will include a meeting with Pope Francis, a Group of 20 summit in Rome and a climate change conference in Glasgow, Scotland. Biden will not return to Washington until next Wednesday. Pelosi was reported to have earlier told her caucus not to “embarrass” the president by rejecting the infrastructure bill. But the delay of the vote affirms that progressives were willing to do just that. Biden himself had reportedly told Democrats on Capitol Hill that it was not “hyperbole to say that the House and Senate majorities, and my presidency, will be determined by what happens in the next week.” Given the stakes involved, the lack of action is frustrating to many in the Democratic Party — even as they acknowledge the misgivings about the cuts to the big bill. “The biggest obstacle that Democrats are facing right now is the lack of progress,” said Tad Devine, a strategist who held a senior role on Sen. Bernie Sanders’s (I-Vt.) 2016 presidential bid. “If they make progress, they can begin to tell a story. The Republicans have a well-developed story, and the Democrats are negotiating something that nobody seems to understand. That’s a loser.”

#### 3.Progressives aren’t on board--- Biden’s push failed.

Sarah Ferris et al, 10-28-2021, with NICHOLAS WU, HEATHER CAYGLE and EUGENE DANIELS. "Fractious Dems struggle to unite around $1.75T megabill," https://www.politico.com/news/2021/10/28/biden-house-democrats-517416

Joe Biden and Nancy Pelosi revved their party toward a House vote as soon as Thursday on a $550 billion Senate-passed infrastructure bill, even as progressives aren't sold yet on taking what one called "a leap of faith in the president."

Soon after the White House outlined a framework for a $1.75 trillion deal on social spending, Biden made a high-stakes appearance on Capitol Hill to sell Pelosi's caucus on it. While some liberal priorities were included in the package of climate, health care and other social policy investments, others were scrapped — and multiple House progressives said they're not prepared to vote yes on infrastructure given their uncertainty about the framework's Senate future.

The Congressional Progressive Caucus held its own meeting after Biden left, as its chair Rep. Pramila Jayapal (D-Wash.) signaled her group still had significant concerns after the president’s pitch for its votes. One of her members, Rep. Cori Bush (D-Mo.), said simply "no" when asked if she would vote for the infrastructure bill after the president's push. Another, Rep. Rashida Tlaib (D-Mich.) answered "hell no" on the infrastructure question.

“There are too many no votes" in the progressive camp, Jayapal told reporters Thursday afternoon, to pass the infrastructure bill on Thursday.

#### 4. New framework doesn’t change the outcome.

Steve Israel, 10-27-2021, represented New York in the U.S. House of Representatives over eight terms and was chairman of the Democratic Congressional Campaign Committee from 2011 to 2015. He is now the director of the Institute of Politics and Global Affairs at Cornell University. "535 'presidents' with veto power: Why budget deal remains elusive," TheHill, https://thehill.com/opinion/finance/578708-535-presidents-with-veto-power-why-budget-deal-remains-elusive

House Speaker Nancy Pelosi (D-Calif.), as of this writing, is pushing for a vote on both measures this week, before President Biden departs for Europe. But my friends at Punchbowl News scoffed this morning: “Let’s be blunt. Democrats aren’t close to a framework agreement on their massive reconciliation package.

The sides are making progress on big-ticket items such as climate, Medicare expansion, prescription drug prices and paid family leave. But there are Democrats who have committed to vote against the bill if it doesn’t address local concerns, such as restoring state and local tax deductions.

Senate Finance Committee Chairman Ron Wyden (D-Ore.) proposes to pay for the reconciliation bill with a “billionaire income tax.” But his House counterpart, Ways and Means Committee Chairman Richard Neal (D-Mass.) prefers to raise marginal and corporate tax rates. Neal recently commented that “[O]ur plan looks better every day.” But not to Sen. Kyrsten Sinema (D-Ariz.), who says she will not support any tax increase in a reconciliation bill.

The tax-writing committees are sending interns to look under couch cushions for loose change. But we still don’t know the top-line number because we don’t have a bottom line. Follow, so far?

Then there’s the issue of investing in climate change mitigation. The New York Times reported on Tuesday that Manchin “has pushed Democrats to drop or weaken a second major climate change provision from the sweeping social policy and environmental spending bill…” But Rep. Jared Huffman (D- Calif.) is, well, cool to a global warming bill that doesn’t go far enough. “I’m hearing the same rumors that the leadership is going to dust off the same vote that we decided not to take a few weeks ago,” Huffman said. “Nothing has changed. So, I’d be shocked if the political calculus was different now. Specifically, the vote count.”

Now it really gets complicated.

Moderates – especially Democrats in districts won by Donald Trump in 2020 – argue that they can’t win reelection without swing voters. Progressives counter that Democrats can’t win without their base. But moderates insist that they don’t have enough of a base in their districts to offset the loss of swing voters, which means losing the midterms. But progressives are adamant that a smaller bill means lower Democratic turnout, which also means losing the midterms. Clear?

The media froths over the seeming chaos. Pelosi and Senate Majority Leader Chuck Schumer (D-N.Y.) are like Batman and Robin (I’ll leave it to your imaginations to decide who’s who). Every caucus meeting is a cliff-hanger, and everyone’s opinion a death knell. Will Manchin concede? Will Rep. Pramila Jayapal (D-Wash.), who chairs the Congressional Progressive Caucus, compromise? Will Sen. Dick Durbin (D-Ill.) get immigration reform? Stay tuned.

What surprises me is that anyone is surprised by the time and difficulty involved in getting a deal. Wasn’t this all to be expected? Isn’t this exactly what happens when you rest a combination of the New Deal, Great Society and Apollo program on a three-vote majority in the House and one in the Senate? Every vote is critical, every member’s position inflated. It’s like we have 535 presidents running around Capitol Hill with veto stamps.

There was a time when these votes were without drama, free of suspense. The leadership told its members how to vote, members generally fell in line, bills got passed, everyone went back to their districts and most everyone got reelected.

But two midterm wave elections changed everything. In 2010, Tea Party Republicans came to town; in 2018, an emboldened generation of progressives. Neither was very keen on the prospect of “regular order”; on respecting the hallowed rules of seniority; on sitting at the bottom row of a dais in a committee room waiting to be recognized. They came not to compromise but to defy.

Add to that how partisan redistricting, residential sorting patterns and social media have pulled rank-and-file members even further to the extremes, and you have a Congress built to sever.

Which means Biden, Pelosi and Schumer continue to skate on thin ice through a murky fog dissembling that Rubik’s Cube, as I’ve said before. It’s not easy, but everyone knows that in the burning heat of a midterm election, the ice cracks.

#### 1. No vote until they see the bill.

Clare Foran 10/28. Congressional Reporter, CNN Politics. “House Democrats again delay infrastructure vote amid party divisions.” <https://www.cnn.com/2021/10/28/politics/biden-agenda-deal-democrats/index.html>.

During the closed-door meeting with House Democrats, Biden laid out in person long-awaited details of his $1.75 trillion economic and climate package, trying to convince progressives who are skeptical of anything short of a fully written bill and commitments from all 50 members of the Senate Democratic caucus to back his framework.

But he came up short, with progressives still demanding that both bills move in tandem.

Phillips was critical of Biden because he did not explicitly say the infrastructure vote should occur on Thursday in the meeting; Pelosi is the one who pushed for the vote.

"I'm not afraid to say I wish he was more explicit. ... This is the commander in chief of the United States. When you spend political equity in front of a caucus two times in a month, I think it's got to be awfully explicit -- and be more forthright."

Phillips added: "If the President had led us down that hallway onto and on the House floor, I think it would have been close. .... I think with Republican votes, it would have passed."

The personal pitch to House Democrats marked a concerted effort by the President to wrest control of an unwieldy process that has led to significant revisions to Democratic goals in the effort to appease Sens. Joe Manchin Manchin and Kyrsten Sinema. While Biden's proposal isn't finalized in its entirety, days of negotiations have brought it to a place where the key elements are all locked in.

Not all Democrats have signed off on the framework that Biden announced Thursday morning, two people familiar with the plan cautioned, but the President believes it's a consensus all Democrats should be able to support.

Neither Manchin nor Sinema explicitly committed to backing the plan Thursday, though they both said they were continuing to negotiate after Biden's meeting with House Democrats.

Sinema reacted to the framework by saying in a statement, "We have made significant progress" and "I look forward to getting this done."

Manchin was noncommittal when asked by reporters whether he will support the framework agreement. Later on Thursday, he said, "We haven't seen the text yet. Everyone has to see it. I don't think anybody could say they could support it until they see the text."

#### 2. PC fails.

Sarah Ferris 10/28. Covers the House for POLITICO’s Congress team, focusing on the Democratic caucus. She has covered Capitol Hill for six years, including stints focused on budget and health care policy for POLITICO Pro and The Hill newspaper. “Dems punt House infrastructure vote in blow to Biden agenda.” <https://www.politico.com/news/2021/10/28/biden-house-democrats-517416>.

The move came after progressives refused to relent in their opposition to the $550 billion infrastructure bill amid a standoff over Democrats’ separate, party-line $1.75 trillion social spending measure. It followed a visit to Capitol Hill by President Joe Biden, who personally asked House Democrats for their support on both the infrastructure plan and the separate social policy framework.

But Speaker Nancy Pelosi and her leadership team were ultimately unable to win over dozens of dug-in liberals in time for a Thursday evening vote. House liberals said they want to review the legislative text of $1.75 trillion social spending legislation the White House outlined Thursday and get a commitment of support from centrist Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — something the two have not outright given.

Despite an aggressive whipping campaign from Democratic leaders, as many as 30 liberal Democrats threatened to block the roughly $550 billion Senate-passed infrastructure bill, according to multiple people familiar with the vote-tallying operation. As House Democrats headed home for the weekend in defeat, many were infuriated and left wondering how they had stumbled yet again, pointing fingers within their own party.

"I tried to tell anybody who would listen that we didn't have the votes" among progressives to pass the infrastructure bill without fully fleshed-out social spending legislation moving alongside it, Congressional Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.) told reporters.

#### 3. Won’t pass---Biden’s PC fails.

Sarah Ferris 10/28. Covers the House for POLITICO’s Congress team, focusing on the Democratic caucus. She has covered Capitol Hill for six years, including stints focused on budget and health care policy for POLITICO Pro and The Hill newspaper. “Dems punt House infrastructure vote in blow to Biden agenda.” <https://www.politico.com/news/2021/10/28/biden-house-democrats-517416>.

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#### 4. Biden PC won’t get progressives on board.

Anthony Adragna, 10-28-2021, Joe Biden faces a crucial test in selling a social spending compromise to one flank of his House caucus: Progressives. Politico, <https://www.politico.com/minutes/congress/10-28-2021/happening-today/>

The scene: President Joe Biden heads to a House Democratic caucus meeting this morning, looking to unlock the votes for a bipartisan infrastructure bill now stalled for more than two months. He has two enormous challenges going in:

Selling a social spending deal: Moderate senators have whittled down the Democrats' agenda and apparently cut big pieces, like paid family and medical leave, out of the deal altogether.

Unlocking the bipartisan bill: Progressives have been steadfast for months they would not vote for the bipartisan bill without at least full text of the social spending bill. They reiterated that on Wednesday.

Can Biden change this? It's going to definitely be a challenge. Here's what Rep. Ilhan Omar (D-Minn.), whip of the Progressive Caucus, said Wednesday on whether a Biden visit would change her calculus.

"​​It certainly won't for me. I don't know if it would for anyone else."

— Rep. Ilhan Omar (D-Minn.)

Bernie weighs in: After Biden's visit, Sen. Bernie Sanders (I-Vt.) called the emerging bill the “most consequential bill since the 1960s” but says has “major gaps in it.” He called for “explicit legislative language” before the House votes on the bipartisan infrastructure bill.

Quite a subtweet: From Omar, not naming Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) but: "There is certainly a trust issue. People that are constantly changing their position can’t be trusted."

But but but: A key line from our Congress team on the bipartisan bill: "Privately, though, some Democrats said the number of hard 'no' members was closer to one dozen. Those could be offset by moderate Republican votes, but still represent a problem for House leadership." More here.

Their argument: Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.) summed it up: "Assuming that 90 percent of the legislative language is written already, which is what the Speaker has said, then it should just take us a couple of days to write up the remaining 10 percent ... I want complete agreement from the senators — all 50 senators — and all of our House colleagues that this is what we're all agreeing to."

Our read: Nothing's impossible, but with so many pieces of this bill still up in the air and potentially cut — paid leave being the most visible on Wednesday — it really feels like Biden has an uphill battle to sell this to progressives as the time to vote on the bipartisan deal.

#### 5. Biden was already all in and failed---PC is exhausted.

Michael D. Shear and Jim Tankersley, 10-28-2021, "Biden Implores Democrats to Support His Transformative Agenda," New York Times https://www.nytimes.com/2021/10/28/us/politics/infrastructure-bill-spending-plan.html

Mr. Biden and his aides gambled on Thursday, effectively calling for a final decision on his economic and environmental agenda and daring holdout Democrats not to back it. Senior administration officials said that the decision to go all-in was a product of the president’s belief that he had exhausted all avenues in the talks and secured the best possible package he could — and, crucially, that the package could command support from all corners of a fickle Democratic caucus.

But as he prepared to land in Rome, Mr. Biden’s bet had not yet paid off. He had not ended months of intraparty squabbling that has dragged down his poll ratings, jeopardized Democratic candidates and raised deep doubts among Americans that his presidency can deliver on the promises of a vast social and economic agenda.

In the closed-door session on Thursday, Speaker Nancy Pelosi told Democratic lawmakers that “when the president gets off that plane, we want him to have a vote of confidence from this Congress.” She urged them to vote on Thursday on a separate, bipartisan $1 trillion infrastructure measure that progressives have seen as their best leverage to ensure passage of the rest of Mr. Biden’s agenda.

Instead, for the second time in a month, Ms. Pelosi pulled back from plans on that vote after progressive Democrats objected again. They ignored the president’s entreaties, signaling their continued mistrust of moderate Democratic senators, whom they fear will not back Mr. Biden’s larger social spending bill when it finally comes to a vote.

#### 6. distrust outweigh PC.

Mike Lillis, 10-28-2021, "Lack of trust mangles Democratic efforts to reach deal," TheHill, https://thehill.com/homenews/house/578844-lack-of-trust-mangles-democratic-efforts-to-reach-deal?amp

As Democratic leaders race to advance President Biden's agenda this week, the highest barrier to a quick infrastructure victory is not one of policy or politics, but distrust.

House liberals have blocked a $1.2 trillion bipartisan infrastructure bill, not to protest the substance, but because they simply don't have faith in party moderates to keep their commitment to a larger "family" benefits bill if it's left hanging in limbo after infrastructure moves to Biden's desk.

The progressive critics are targeting two moderates in particular - Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) - who have emerged as the face of centrist opposition to key parts of Biden's spending plan.

"Sinema and Manchin have proven that they can't be trusted," Rep. Jimmy Gomez (D-Calif.), a member of the Congressional Progressive Caucus (CPC), said bluntly

Liberals are accusing the centrist pair of moving the goal posts as the talks have evolved. Manchin, for example, has endorsed the notion of hiking taxes on the wealthy, but is now pushing back against a newly proposed billionaire tax.

The flipflopping has infuriated Senate liberals like Bernie Sanders (I-Vt.), who lamented Wednesday that every proposed revenue stream "seems to be destroyed" by the moderate holdouts. And it hasn't been overlooked in the House, where progressives are pointing to Manchin's revolving position on tax hikes as further reason for their growing distrust.

"Manchin and Sinema keep raising different issues late in the game, which they could have done a while back," Gomez said. "It erodes people's trust that they're actually serious about getting anything done."

Gomez is hardly alone. Rep. Jamaal Bowman (D-N.Y.) also took aim at the centrist senators, calling them out of step with voters who back Biden's agenda.

"Manchin and Sinema aren't using common sense and moving in the direction of the country," said Bowman. "They don't seem to be moving with the country; they seem to be moving with their own special interests."

Bowman noted that the Senate had approved a $3.5 trillion budget bill - the same figure favored by Biden - only to have Manchin and Sinema oppose new spending at that level.

"So how can we trust them?" Bowman asked.

The tensions have arrived at an inopportune time for Democratic leaders, who are racing to bridge the internal divisions surrounding Biden's agenda in the next 24 hours.

Moderate lawmakers, backed by leadership, want an immediate vote on the Senate-passed bipartisan infrastructure bill - a centerpiece of Biden's economic plan - that would lend the president a big win before he heads overseas Thursday for a high-stakes global climate summit. Yet House liberals are threatening to sink that proposal if it hits the floor before there's a solid, detailed agreement - if not a vote - on the larger but less popular social benefits package, the second piece of Biden's domestic agenda.

The impasse has heightened the likelihood that Biden will be forced to head to Europe on Thursday without an infrastructure win under his belt.

Speaker Nancy Pelosi (D-Calif.) has sought to break the deadlock by urging those progressives to accept a "framework" deal on the social spending legislation in exchange for their infrastructure votes. In a letter to Democrats on Wednesday, Pelosi acknowledged the erosion of trust between the groups, but called on all sides to have "trust and confidence in an agreement for the Build Back Better Act" for the sake of enacting the infrastructure bill more quickly.

"[W]e are close to agreement on the priorities and the topline of the legislation, which can and must pass the House and Senate," Pelosi wrote.

The trouble is the relationship between the feuding factions has grown so toxic over the course of the months-long debate that liberals say they've lost all faith in the centrists to honor their commitments. And they're digging in despite Pelosi's appeals.