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### Inequality---1AC

#### Advantage 1 is Inequality.

#### 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.

#### Current antitrust law explains the decline in wages and rise in inequality.

Sandeep Vaheesan 18. Legal director at the Open Markets Institute. “How Contemporary Antitrust Robs Workers of Power” LPE Project. 07-19-18. <https://lpeproject.org/blog/how-contemporary-antitrust-robs-workers-of-power/>

The political economist Albert Hirschman developed the idea that members of an organization can exercise power in two ways—through exit and voice. Market activity is associated with exit: consumers unhappy with the price or quality of service of their current wireless carrier can switch to a rival carrier offering lower rates or better service. Elections exemplify voice: voters can replace a corrupt or ineffective incumbent officeholder with a challenger promising to make the government work for ordinary people. For workers, both exit (joining a new employer) and voice (making demands of a current employer) are important. Despite the pro-worker aims of the framers of the Sherman and Clayton Acts, **antitrust law** today is an **enemy of both exit and voice for workers.** For more than a generation, antitrust enforcers have permitted **labor markets to** **become highly concentrated** and have also **interfered with the efforts** of a large segment of workers to build collective power. Through their labor market actions, the Department of Justice (DOJ) and Federal Trade Commission (FTC) reinforce, rather than tame, corporate power. To create a progressive, pro-worker antitrust, legislators and policymakers must adopt a radically different vision for the field. Tens of millions of American workers **wield little or no power** in their place of work. In many parts of the country, workers lack meaningful exit. They **face concentrated local labor markets** in which only a handful of employers compete (at least theoretically) for their services. In some labor markets, employees have only one actual or prospective employer. In other words, many Americans, at least in their capacity as workers, may experience what we often think of as a relic of a bygone era—the company town. As recent studies have shown, employer-side concentration is **associated with significantly lower wages**. And other research has found that concentration at one level of a supply chain can **depress wages further upstream.** In addition to concentrated markets, approximately **30 million workers** are subject to **non-compete clauses**, which prevent them from accepting a new job or starting a business in the same line of work. Non-compete clauses, regardless of whether they are enforced, can signal to workers that their choice is **either stay at their current job or suffer extended unemployment.** Along with possessing few exit options, most workers cannot assert effective voice in the workplace. Big business’s legal and political war on labor’s power has severely weakened unions. In contrast to the 1950s when roughly a third of wage and salary workers were unionized, only a small percentage of workers are members of labor unions today—around one in ten among all workers, and one in sixteen among workers in the private sector. This decline in union density **explains a significant fraction of the forty-year stagnation in wages and increase in income inequality**. Moreover, even if wage gains had kept pace with productivity, the collapse of organized labor means that workers lost say over numerous workplace issues. While employees can speak up as individuals, this type of voice is no substitute for the collective voice that comes from a democratic union. Given that most individual workers are dispensable and replaceable for their employers, a lone voicing of grievance often can easily be ignored or even invite retaliation from an employer. And, beyond the site of employment, unorganized workers are less able to exercise voice in electoral politics and check the dominant influence of corporations. Antitrust enforcers have allowed labor markets to grow more concentrated across the country. Just as labor law has been rewritten to cripple labor organizing, the executive branch and courts have remade antitrust to be much friendlier to capital over the past four decades. Influenced by the writings of Robert Bork, the Supreme Court has held that the **antitrust laws are a “consumer welfare prescription.”** Although the Supreme Court and the antitrust agencies counterintuitively state that consumer welfare accounts for harms to workers and other sellers of services, the DOJ and the FTC focus their enforcement on mergers and practices harmful to consumers. In developing enforcement priorities, the federal antitrust agencies have relied on simplistic economic theory. Instead of directing their economists to study the structure of labor markets, the DOJ and the FTC have adopted an Econ 101 view of the world and assumed that labor markets are generally competitive on the employer side. Embracing this fiction, the agencies have never stopped a merger on labor market grounds. **Due to antitrust inaction** (and other factors), labor market **concentration has increased** since the late 1970s.

#### Inequality undermines US international engagements---it’s the biggest threat.

Kurt M.Campbell 14**.** Chairman and chief executive of the Asia Group investment and consulting firm was assistant secretary of state for East Asian and Pacific Affairs from 2009 to 2013. “How income inequality undermines U.S. power” The Washington Post. https://www.washingtonpost.com/opinions/how-income-inequality-undermines-us-power/2014/11/28/53fab4e4-74e5-11e4-9d9b-86d397daad27\_story.html?utm\_term=.40bd11b21cf7

Much has been written about the domestic consequences of growing income inequality in the United States — how **inequality depresses growth**, puts downward pressure on the middle class, accentuates wage stagnation and creates added difficulty paying for a college education and buying a home — but much less has been said about how inequality will affect America’s role in the world. How will the social science experiment of allowing wealth to settle so unequally between the top 1 percent and rest of the United States impact the foundations and contours of U.S. foreign policy? In fact, there are likely to be subtle and **direct consequences of growing inequality** both for the United States’ **international standing** and its activism. In most critical respects, the **United States has helped to create and underwrite the global operating system** since the end of World War II. This required a citizen’s sense of external responsibility and belief that the United States had **something unique** and valuable to confer to the world. Americans over these generations have regularly demonstrated in word and deed that they were prepared to bear burdens and advance ideas. Coinciding with this era was a general sense of overarching optimism that reinforced a post-World War II period of unprecedented American activism on the global scene. It is likely that as a **growing segment of the population strains just to get by**, it will increasingly view foreign policy — foreign assistance and military spending alike — as a kind of **luxury ripe for cuts** and a reduction in ambition. It is possible to see early indicators of these sentiments on the right and left, in the form of both tea party isolationism and Occupy Wall Street suspicion that corporate interests drive America’s foreign entanglements. It is also the case that other countries have long emulated aspects of the American Way in designing their own development models. Having access to higher education, **creating conditions that support innovation and allowing for greater upward mobility** have all been deeply attractive qualities to many nations. But it is the construction of a **durable U.S. middle class** that has been perhaps **most compelling** to highly stratified societies across Latin America, Asia and Africa. Now, however, the United States is moving in the other direction, toward an **unstable society divided between astronomically rich elites** and everyone else. This **undermines a critical component of U.S. soft power** and is a model for societal engineering that few would choose to emulate. It is also the case that the most recent era of U.S. exertion on the global stage has involved nearly 15 years of conflict in the Middle East and South Asia. The most important features of these largely military engagements have involved refinements in counterinsurgency technique and adaptations in military technology. A different 1 percent of the U.S. population has been primarily involved in this struggle: the U.S. military and others associated with the defense establishment. Aside from clapping when a uniformed military member greets an emotional family at an airport homecoming, the vast majority of the population has been largely unaffected by these conflicts. They neither paid for nor fought these wars. The next phase of intense global engagement is likely to demand much more from a larger share of the population. The lion’s share of 21st-century history will play out in Asia, with its thriving and **acquisitive middle classes driving innovation, nationalist competitions, military ambitions, struggles over history and identity, and simple pursuit of power.** The United States is in the midst of a **major reorientation** of its foreign policy and commercial priorities that will draw it more closely to Asia in the decades ahead. The competition for power and prestige there rests on comprehensive aspects of national power — as much to our product and service offerings, the strength of our educational system and the health and vitality of our national infrastructure as to the quality of U.S. military capabilities. Each of these efforts require **substantial and sustained longer-term investments**; all face funding shortfalls due to myriad challenges. A corresponding **consequence of growing inequality has been a reduction** in support for these building blocks for comprehensive and sustained **international engagement.** The worrisome dimensions of income inequality on the quality of domestic American life should be enough to cause us to **consider enacting remedies**. However, the potential negative implications on U.S. performance internationally can only add to the case. Ultimately, a sustained and purposeful American internationalism is inextricably linked to the health of our domestic life, to which **gaping inequality is the biggest threat.**

#### Collapsing worker welfare causes neo-isolationist nativism---recovery future-proofs internationalism.

Charles A. Kupchan and Peter L. Trubowitz May/June 21. Charles A. Kupchan is a Senior Fellow at the Council on Foreign Relations, Professor of International Affairs in the School of Foreign Service and the Government Department at Georgetown University. Peter L. Trubowitz is Professor of International Relations at the London School of Economics and Political Science and an Associate Fellow at Chatham House. “The Home Front: Why an Internationalist Foreign Policy Needs a Stronger Domestic Foundation”. https://www.foreignaffairs.com/articles/united-states/2021-04-20/foreign-policy-home-front

U.S. President Joe Biden has declared that under his leadership, “America is back” and once again “ready to lead the world.” Biden wants to return the country to its traditional role of catalyzing international cooperation and staunchly defending liberal values abroad. His challenge, however, is primarily one of politics, not policy. Despite Biden’s victory in last year’s presidential election, his internationalist vision faces a deeply skeptical American public. The political foundations of U.S. internationalism have collapsed. The domestic consensus that long supported U.S. engagement abroad has come apart in the face of mounting partisan discord and a deepening rift between urban and rural Americans. An inward turn has accompanied these growing divides. President Donald Trump’s unilateralism, neo-isolationism, protectionism, and nativism were anathema to most of the U.S. foreign policy establishment. But Trump’s approach to statecraft tapped into public misgivings about American overreach, contributing to his victory in 2016 and helping him win the backing of 74 million voters in 2020. An “America first” approach to the world sells well when many Americans experience economic insecurity and feel that they have been on the losing end of globalization. A recent survey by the Pew Research Center revealed that roughly half the U.S. public believes that the country should pay less attention to problems overseas and concentrate more on fixing problems at home. Redressing the hardships facing many working Americans is essential to inoculating the country against “America first” and Trump’s illiberal politics of grievance. That task begins with economic renewal. Restoring popular support for the country’s internationalist calling will entail sustained investment in pandemic recovery, health care, infrastructure, green technology and jobs, and other domestic programs. Those steps will require structural political reforms to ease gridlock and ensure that U.S. foreign policy serves the interests of working Americans. What Biden needs is an “inside out” approach that will link imperatives at home to objectives abroad. Much will depend on his willingness and ability to take bold action to rebuild broad popular support for internationalism from the ground up. Success would significantly reduce the chances that the president who follows Biden, even if he or she is a Republican, would return to Trump’s self-defeating foreign policy. Such future-proofing is critical to restoring international confidence in the United States. In light of the dysfunction and polarization plaguing U.S. politics, leaders and people around the world are justifiably questioning whether Biden represents a new normal or just a fleeting reprieve from “America first.”

#### Soft power solves global existential risks.

Joseph S. Nye Jr. 20. Harvard University Distinguished Service Professor, Emeritus. "COVID-19’s Painful Lesson About Strategy and Power". War on the Rocks. 3-26-2020. https://warontherocks.com/2020/03/covid-19s-painful-lesson-about-strategy-and-power/

In 2017, President Donald Trump announced a new National Security Strategy that focused on great-power competition with China and Russia. While the plans also note the role of alliances and cooperation, the implementation has not. Today, COVID-19 shows that the strategy is inadequate. Competition and an “America First” approach is not enough to protect the United States. Close cooperation with both allies and adversaries is also essential for American security.

Under the influence of the information revolution and globalization, world politics is changing dramatically. Even if the United States prevails in the traditional great-power competition, it cannot protect its security acting alone. COVID-19 is not the only example. Global financial stability is vital to U.S. prosperity, but Americans need the cooperation of others to ensure it. And while trade wars have set back economic globalization, there is no stopping the environmental globalization represented by pandemics and climate change. In a world where borders are becoming more porous to everything from drugs to infectious diseases to cyber terrorism, the United States must use its soft power of attraction to develop networks and institutions that address these new threats. For example, this administration proposed halving the U.S. contribution to the World Health Organization’s budget — now we need it more than ever.

A successful national security strategy should start with the fact that “America First” means America has to lead efforts at cooperation. A classic problem with public goods (like clean air, which all can share and from which none can be excluded) is that if the largest consumer does not take the lead, others will free-ride and the public goods will not be produced. As the technology expert Richard Danzig summarizes the problem:

Twenty-first century technologies are global not just in their distribution, but also in their consequences. Pathogens, AI systems, computer viruses, and radiation that others may accidentally release could become as much our problem as theirs. Agreed reporting systems, shared controls, common contingency plans, norms and treaties must be pursued as a means of moderating our numerous mutual risks.

Tariffs and border walls cannot solve these problems. While American leadership is essential because of the country’s global influence, success will require the cooperation of others.

On transnational issues like COVID-19 and climate change, power becomes a positive-sum game. It is not enough to think of American power over others. We must also think in terms of power to accomplish joint goals, which involves power with others. On many transnational issues, empowering others helps us to accomplish our own goals. The United States benefits if China improves its energy efficiency and emits less carbon dioxide, or improves its public health systems. In this world, institutional networks and connectedness are an important source of information and of national power, and the most connected states are the most powerful. Washington has some sixty treaty allies while China has few. Unfortunately, as Mira Rapp-Hooper recently argued, the United States is squandering that power resource.

In the past, the openness of the United States enhanced its capacity to build networks, maintain institutions, and sustain alliances. But will that openness and willingness to engage with the rest of the world prove sustainable in the current populist mood of American domestic politics? Even if the United States possesses more hard military and economic power than any other country, it may fail to convert those resources into effective influence on the global scene. Between the two world wars, America did not and the result was disastrous.

#### A worker welfare standard would protect workers and reduce labor market concentration.

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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.

#### Prioritizing worker welfare solves inequality.

Eugene K. Kim 20. J.D. 2020; Yale College, B.A. 2016. “Labor’s Antitrust Problem: A Case for Worker Welfare” The Yale Law Journal. 2020. https://www.yalelawjournal.org/pdf/130.2Kim\_q1s8bt8t.pdf

In this Note, I show that the union exemption should be read to encompass a broader concern for the welfare of workers. In other words, **antitrust law** should be seen **not merely as protecting consumers from producers, but also labor from capital.** My primary justification is drawn from welfare economics and the “theory of the second best,” which suggests that when a certain market distortion cannot be removed, it may be economically optimal (i.e., the next best option) to **introduce a countervailing distortion.**21 An ideal competitive labor market would have no market power on either the supply side or demand side, but some degree of rent-extracting market power on the demand side (i.e., firms) is inevitable due to the limited resources of enforcement agencies and labor-market frictions. If concentration is inevitable among employers, permitting concentration among workers is the next best way to (1) counteract abuse and rent-extractive behavior from employers and (2) **move income from capitalists to workers**, who by virtue of their relatively low income may receive higher marginal utility from income.22 Further justification can be found in the **legislative history of the major antitrust statutes.** During congressional debate over the antitrust laws, key legislators expressed their intent not only to preserve the organizing power of labor, but also to support affirmatively the accumulation of labor power to contest concentrations of capital.23 Thus, legislative intent provides **justification for worker welfare beyond a strictly economic reading of the antitrust laws.** Even when labor organizing may not be the most “efficient” economic choice,24 it may still comport with the drafters’ goal of **protecting individuals from the economic power of corporations.**

### Modeling---1AC

#### Advantage 2 is Modeling.

#### Competition standards around the world focus on consumer welfare.

Marianela Lopez-Galdos 17. “Antitrust in 60 Seconds: Is the Consumer Welfare Standard Appropriate?” Disruptive Competition Project. 11-17-17. https://www.project-disco.org/competition/111717-antitrust-in-60-seconds-is-the-consumer-welfare-standard-appropriate/

In the rest of the world, including the European Union, most competition systems were put in place in the post-war periods. As such, the pursuit of pluralistic goals guided by public interest concerns through the competition system was a method by which these toddling democracies sought to boost and defend their nascent democratic process. That being said, competition systems have evolved, and mature ones have **narrowed the antitrust analysis to focus on consumer welfare.** In this context, it is noteworthy that the UN and OECD have **separately concluded** that many competition systems **pursue consumer welfare as the primary competition goal.** In 1995, UNCTAD concluded that “There has in fact been an increasing convergence in the provisions or the application of competition laws over the laws two decades. Competition systems in many countries are now placing relatively greater emphasis upon the protection of competition, as well as **upon efficiency and competitiveness criteria**, rather than upon other public interest goals”.

#### Replacing the federal consumer welfare standard prevents global fascism.

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After World War II, the United States engaged in a historic effort to rebuild Europe and Japan through the Marshall Plan. While the story of the Marshall Plan is well known, what is less commonly understood is that the United States exported aggressive antitrust laws to Europe during those post-war years. The Marshall Plan antitrust advisors believed that the massive consolidation in the German economy facilitated and sustained fascism, and they argued that a democratic society required a democratic economy.26 Today, in the context of increasing concentration, rising authoritarianism, and foreign governments commingling state and markets through state-owned enterprises and state capitalism, promoting economic democracy abroad should be an essential foreign policy objective. And yet, the text of the Trans-Pacific Partnership, a trade agreement designed by the Obama Administration, established the objectives of competition policy as “economic efficiency and consumer welfare,” a narrowly drawn and ideological conception of the purposes of antitrust law that has no basis in U.S. statutory law.27 Presidents and their administrations should abandon these cramped views of antitrust and instead encourage the adoption of more aggressive antitrust laws abroad.

#### Global use of the consumer welfare standard fuels populism.

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Other competition legal scholars have called attention to the fact **the socioeconomic social contract is breaking down.** For example, Gal (2019) argues that: A growing number of citizens believe that the promises of the competition based market system, which form an important part of the implicit social contract, are not fulfilled and that capitalistic markets are no longer working in their favour. Indeed, statistics indicate that social mobility is low; that wealth is aggregated disproportionately in the hands of the already well-off; that **wealth inequality keeps rising**; that several large firms dominate the digital economy, thereby blocking at least some of the promises that technological changes were thought to bring about; that technological changes such as robotics create significant disruption effects and have negative implications on the labor market; or that education and social security **do not create viable solutions** for workers in order to ensure that wide geographic areas or demographic groups are not significantly and irreparably harmed. If one recognises the fact that the unfairness of the result of competition may be one of the **sources of populism** and that a **rebalancing of the benefits of the competitive process** is in order to make economic competition tolerable, the question is how to achieve it. Because the redistributive tools we have **do not seem to be adequate**, some of the hotly debated issues are whether we should be more cautious about entering into trade agreements with countries having widely different social and economic environments or rules and, at the domestic level, whether **antitrust** or competition law enforcement should **concern itself with the fairness of the competitive process.** Concerning antitrust or competition law enforcement three main arguments have been put forward against the inclusion of fairness considerations in the enforcement of anti- trust and competition law. First, the concept of fairness is vague; second, taking into consideration fairness would entail a social cost in terms of efficiency; and third, competition authorities are not equipped to trade fairness against efficiency considerations. Trebilcock and Ducci (2017) consider the vagueness of the notion of fairness and the necessity to specify the notions of fairness which could be relevant for competition. They usefully distinguish different notions of fairness that are pertinent to domestic markets: vertical fairness (between producers and consumers); horizontal fairness on the demand side (between consumers); horizontal fairness on the supply side (between producers); and procedural fairness (due process and private enforcement). One can **easily show** that antitrust is congruent with fairness with respect to horizontal fairness among suppliers in the sense that competition or antitrust law enforcement aims at **eliminating the barriers to entry or to development**, which prevent competitors from entering new markets or competing on the merits with established firms. This dimension of competition does not seem particularly problematic from the standpoint of fairness. One can also mention the fact that competition law, to the extent that it aims at eliminating discriminatory practices (as in the European competition law where article 102 prohibits firms with market power from directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, or from applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage), goes some way toward meeting the horizontal fairness condition for consumers. The question of whether the way in which competition laws are implemented meet vertical fairness criteria is more complex. Some, like Trebilcock and Ducci, argue that **the goal of protecting consumer welfare assigned in most countries** to competition law is a somewhat **clumsy attempt to bring into competition law fairness issues** which are alien to what which competition law should be concerned with. For example, they write: Despite being usually justified by a distributive justice rationale, we believe that the consumer welfare standard **does not vindicate distributional equity concerns for consumers** vis-a-vis producers, and we believe that such choice of welfare standard does not represent an optimal tool for redistributive goals. On the contrary, we view the consumer welfare standard as resulting from a mix of poorly defined distributive concerns and more political economy-oriented explanations. Under the latter perspective, the ascendance of the consumer welfare standard may be interpreted as a political bargain between self-interested groups of producers (primarily large firms defending the efficiency benefits of economies of scale) and consumers (including final consumers, small buyers, farmers), where the concept of ‘consumer welfare’ can be seen as a more acceptable form of welfare standard for non-specialist audiences, which would politically allow the advancement of economic goals in the competition policy domain.

#### Populism causes extinction.

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The international system is at a **historical inflection point.** As Asia continues its economic ascent, two centuries of Western domination of the world, first under Pax Britannica and then under Pax Americana, are coming to an end. The West is losing not only its material dominance but also its ideological sway. Around the world, democracies are **falling prey** to illiberalism and **populist dissension** while a rising China, assisted by a pugnacious Russia, seeks to challenge the West’s authority and republican approaches to both domestic and international governance. U.S. President Joe Biden is committed to refurbishing American democracy, restoring U.S. leadership in the world, and taming a pandemic that has had devastating human and economic consequences. But Biden’s victory was a close call;on neither side of the Atlantic will **angry populism or illiberal temptations readily abate**. Moreover, even if Western democracies overcome polarization, beat back illiberalism, and pull off an economic rebound, they will not forestall the arrival of a world that is both multipolar and ideologically diverse. History makes clear that such **periods of tumultuous** **change** come with **great peril**. Indeed, **great-power** **contests** over hierarchy and ideology regularly lead to **major wars**. Averting this outcome requires soberly acknowledging that the Western-led liberal order that emerged after World War II cannot anchor global stability in the twenty-first century. The search is on for a viable and effective way forward. The best vehicle for promoting stability in the twenty-first century is a global concert of major powers. As the history of the nineteenth-century Concert of Europe demonstrated—its members were the United Kingdom, France, Russia, Prussia, and Austria—a steering group of leading countries can curb the geopolitical and ideological competition that usually accompanies multipolarity. Concerts have two characteristics that make them well suited to the emerging global landscape: political inclusivity and procedural informality. A concert’s inclusivity means that it puts at the table the geopolitically influential and powerful states that need to be there, regardless of their regime type. In so doing, it largely separates ideological differences over domestic governance from matters of international cooperation. A concert’s informality means that it eschews binding and enforceable procedures and agreements, clearly distinguishing it from the UN Security Council. The UNSC serves too often as a public forum for grandstanding and is regularly paralyzed by disputes among its veto-wielding permanent members. In contrast, a concert offers a private venue that combines consensus building with cajoling and jockeying—a must since major powers will have both common and competing interests. By providing a vehicle for genuine and sustained strategic dialogue, a global concert can realistically mute and manage inescapable geopolitical and ideological differences. A global concert would be a consultative, not a decision-making, body. It would address emerging crises yet ensure that urgent issues would not crowd out important ones, and it would deliberate on reforms to existing norms and institutions. This steering group would help fashion new rules of the road and build support for collective initiatives but leave operational matters, such as deploying peacekeeping missions, delivering pandemic relief, and concluding new climate deals, to the UN and other existing bodies. The concert would thus tee up decisions that could then be taken and implemented elsewhere. It would sit atop and backstop, not supplant, the current international architecture by maintaining a dialogue that does not now exist. The UN is too big, too bureaucratic, and too formalistic. Fly-in, fly-out G-7 or G-20 summits can be useful but even at their best are woefully inadequate, in part because so much effort goes toward haggling over detailed, but often anodyne, communiqués. Phone calls between heads of state, foreign ministers, and national security advisers are too episodic and often narrow in scope. Fashioning major-power consensus on the international norms that guide statecraft, accepting both liberal and illiberal governments as legitimate and authoritative, advancing shared approaches to crises—the Concert of Europe relied on these important innovations to preserve peace in a multipolar world. By drawing on lessons from its nineteenth-century forebearer, a twenty-first-century global concert can do the same. Concerts do lack the certitude, predictability, and enforceability of alliances and other formalized pacts. But in designing mechanisms to preserve peace amid geopolitical flux, policymakers should strive for the workable and the attainable, not the desirable but impossible. A GLOBAL CONCERT FOR THE TWENTY-FIRST CENTURY A global concert would have six members: China, the European Union, India, Japan, Russia, and the United States. Democracies and nondemocracies would have equal standing, and inclusion would be a function of power and influence, not values or regime type. The concert’s members would collectively represent roughly 70 percent of both global GDP and global military spending. Including these six heavyweights in the concert’s ranks would give it geopolitical clout while preventing it from becoming an unwieldy talk shop. Members would send permanent representatives of the highest diplomatic rank to the global concert’s standing headquarters. Although they would not be formal members of the concert, four regional organizations—the African Union, Arab League, Association of Southeast Asian Nations (ASEAN), and Organization of American States (OAS)—would maintain permanent delegations at the concert’s headquarters. These organizations would provide their regions with representation and the ability to help shape the concert’s agenda. When discussing issues affecting these regions, concert members would invite delegates from these bodies as well as select member states to join meetings. For example, were concert members to address a dispute in the Middle East, they could request the participation of the Arab League, its relevant members, and other involved parties, such as Iran, Israel, and Turkey. A global concert would shun codified rules, instead relying on dialogue to build consensus. Like the Concert of Europe, it would privilege the territorial status quo and a view of sovereignty that precludes, except in the case of international consensus, using military force or other coercive tools to alter existing borders or topple regimes. This relatively conservative baseline would encourage buy-in from all members. At the same time, the concert would provide an ideal venue for discussing globalization’s impact on sovereignty and the potential need to deny sovereign immunity to nations that engage in certain egregious activities. Those activities might include committing genocide, harboring or sponsoring terrorists, or severely exacerbating climate change by destroying rainforests. Policymakers should strive for the workable and the attainable, not the desirable but impossible. A global concert would thus put a premium on dialogue and consensus. The steering group would also acknowledge, however, that great powers in a multipolar world will be driven by realist concerns about hierarchy, security, and regime continuity, making discord inescapable. Members would reserve the right to take unilateral action, alone or through coalitions, when they deem their vital interests to be at stake. Direct strategic dialogue would, though, make surprise moves less common and, ideally, unilateral action less frequent. Regular and open consultation between Moscow and Washington, for example, might have produced less friction over NATO enlargement. China and the United States are better off directly communicating with each other over Taiwan than sidestepping the issue and risking a military mishap in the Taiwan Strait or provocations that could escalate tensions. A global concert could also make unilateral moves less disruptive. Conflicts of interest would hardly disappear, but a new vehicle devoted exclusively to great-power diplomacy would help make those conflicts more manageable. Although members would, in principle, endorse a norm-governed international order, they would also embrace realistic expectations about the limits of cooperation and compartmentalize their differences. During the nineteenth-century concert, its members frequently confronted stubborn disagreements over, for instance, how to respond to liberal revolts in Greece, Naples, and Spain. But they kept their differences at bay through dialogue and compromise, returning to the battlefield in the Crimean War in 1853 only after the revolutions of 1848 spawned destabilizing currents of nationalism. A global concert would give its members wide leeway when it comes to domestic governance. They would effectively agree to disagree on questions of democracy and political rights, ensuring that such differences do not hinder international cooperation. The United States and its democratic allies would not cease criticizing illiberalism in China, Russia, or anywhere else, and neither would they abandon their effort to spread democratic values and practices. On the contrary, they would continue to raise their voices and wield their influence to defend universal political and human rights. At the same time, China and Russia would be free to criticize the domestic policies of the concert’s democratic members and publicly promote their own vision of governance. But the concert would also work toward a shared understanding of what constitutes unacceptable interference in other countries’ domestic affairs and, as a result, are to be avoided. OUR BEST HOPE Establishing a global concert would admittedly constitute a setback to the liberalizing project launched by the world’s democracies after World War II. The proposed steering group’s aspirations set a modest bar compared with the West’s long-standing aim of spreading republican governance and globalizing a liberal international order. Nonetheless, this scaling back of expectations is unavoidable given the twenty-first century’s geopolitical realities. The international system, for one, will exhibit characteristics of both bipolarity and multipolarity. There will be two peer competitors—the United States and China. Unlike during the Cold War, however, ideological and geopolitical competition between them will not encompass the world. On the contrary, the EU, Russia, and India, as well as other large states such as Brazil, Indonesia, Nigeria, Turkey, and South Africa, will likely play the two superpowers off each other and seek to preserve a significant measure of autonomy. Both China and the United States will also likely limit their involvement in unstable zones of less strategic interest, leaving it to others—or no one—to manage potential conflicts. China has long been smart enough to keep its political distance from far-off conflict zones, while the United States, which is currently pulling back from the Middle East and Africa, has learned that the hard way. The international system of the twenty-first century will therefore resemble that of nineteenth-century Europe, which had two major powers—the United Kingdom and Russia—and three powers of lesser rank—France, Prussia, and Austria. The Concert of Europe’s primary objective was to preserve peace among its members through a mutual commitment to upholding the territorial settlement reached at the Congress of Vienna in 1815. The pact rested on good faith and a shared sense of obligation, not contractual agreement. Any actions required to enforce their mutual commitments, according to a British memorandum, “have been deliberately left to arise out of the circumstances of the time and of the case.” Concert members recognized their competing interests, especially when it came to Europe’s periphery, but sought to manage their differences and prevent them from jeopardizing group solidarity. The United Kingdom, for example, opposed Austria’s proposed intervention to reverse a liberal revolt that took place in Naples in 1820. Nonetheless, British Foreign Secretary Lord Castlereagh eventually assented to Austria’s plans provided that “they were ready to give every reasonable assurance that their views were not directed to purposes of aggrandizement subversive of the Territorial System of Europe.” A global concert would give its members wide leeway when it comes to domestic governance. A global concert, like the Concert of Europe, is well suited to promoting stability amid multipolarity. Concerts limit their membership to a manageable size. Their informality allows them to adapt to changing circumstances and prevents them from scaring off powers averse to binding commitments. Under conditions of rising populism and nationalism, widespread during the nineteenth century and again today, powerful countries prefer looser groupings and diplomatic flexibility to fixed formats and obligations. It is no accident that major states have already been turning to concert-like groupings or so-called contact groups to tackle tough challenges; examples include the six-party talks that addressed North Korea’s nuclear program, the P5+1 coalition that negotiated the 2015 Iran nuclear deal, and the Normandy grouping that has been seeking a diplomatic resolution to the conflict in eastern Ukraine. The concert can be understood as a standing contact group with a global purview. Separately, the twenty-first century will be politically and ideologically diverse. Depending on the trajectory of the populist revolts afflicting the West, liberal democracies may well be able to hold their own. But so too will illiberal regimes. Moscow and Beijing are tightening their grip at home, not opening up. Stable democracy is **hard to find** in the Middle East and Africa. Indeed, **democracy is receding,** not advancing, worldwide—a trend that could well continue. The international order that comes next must make room for ideological diversity. A concert has the necessary informality and flexibility to do so; it separates issues of domestic rule from those of international teamwork. During the nineteenth century, it was precisely this hands-off approach to regime type that enabled two liberalizing powers—the United Kingdom and France—to work with Russia, Prussia, and Austria, three countries determined to defend absolute monarchy. Finally, the inadequacies of the current international architecture underscore the need for a global concert. The rivalry between the United States and China is heating up fast, the **world is suffering** through a devastating pandemic, climate change is advancing, and the evolution of cyberspace poses new threats. These and other challenges mean that clinging to the status quo and banking on existing international norms and institutions would be dangerously naive. The Concert of Europe was formed in 1815 owing to the years of devastation wrought by the Napoleonic Wars. But the lack of great-power war today should not be cause for complacency. And even though the world has passed through previous eras of multipolarity, the advance of globalization increases the demand for and importance of new approaches to global governance. Globalization unfolded during Pax Britannica, with London overseeing it until World War I. After a dark interwar hiatus, the United States took up the mantle of global leadership from World War II into the twenty-first century. But Pax Americana is now running on fumes. The United States and its traditional democratic partners have neither the capability nor the will to anchor an interdependent international system and universalize the liberal order that they erected after World War II. The absence of U.S. leadership during the COVID-19 crisis was striking; each country was on its own. President Biden is guiding the United States back to being a team player, but the nation’s pressing domestic priorities and the onset of multipolarity will deny Washington the outsize influence it once enjoyed. Allowing the world to slide toward regional blocs or a two-bloc structure similar to that of the Cold War is a nonstarter. The United States, China, and the rest of the globe cannot fully uncouple when national economies, financial markets, and supply chains are irreversibly tethered together. A great-power steering group is the best option for managing an integrated world no longer overseen by a hegemon. A global concert fits the bill.

#### Specifically, India relies on the consumer welfare standard---lack of regulation in the labor market has increased the exploitation of workers.

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In spite of the overwhelming impact on ‘labour welfare’ due to regulatory intervention, as is clear from this case, the competition authorities globally have largely ignored the importance of antitrust regulation in labour markets. There are more than one reason for this inattention. The inception of antitrust laws focussed on ‘consumer welfare’. Regulators restricted the primary application of antitrust laws to reach this end. The first clear statute expanding the ambit of the antitrust regime to labour markets was the Clayton Act, 1914. Twelve years after this enactment, the Supreme Court of the United States held2 that Section 63 of the Act, unequivocally applied to ‘Wage-Fixing Conspiracies’. Even thereafter, consumer welfare and labour welfare could never get the same attention of the authorities. Conservative scholars like Stutz (2018) in the United States believed that labour and antitrust policy are conceptually different and cater to competing values. Moreover, higher wages resulting from antitrust intervention process can harm downstream product-market competition by raising marginal costs and reducing output. The inverse correlation between these two values could be a reason for giving preference to the consumers placed at the end of the downstream market over a factor relevant in the supply chain. Additionally, most countries adopted their own labour laws. To some extent, these statutes or other non-statute exemptions may combine to shield collusive behaviour on both sides of labour negotiations (Jerry and Knebel, 1984). Another reason that may have created the impression that consumer welfare in the product and service market(s) is more significant is the negligible antitrust litigations against employers, across the globe. The absence of antitrust litigations in the employment sector also leads to the perception of non-application of antitrust laws in labour markets. However, there are various reasons for the limited antitrust litigations in the labour market. Unlike the product market litigations, which are either initiated by competitors, large companies, etc., with the resources and incentives to bear the high costs of complex antitrust litigations, aggrieved workers may not always have the resources or incentives (Weil, 2017). The straightforward analysis based on the rise in prices is inapplicable in labour market antitrust litigations. Class action suits also become tough as workers would usually have diverse interests and be at different positions in life and employment. The small number of successful antitrust litigations in the labour markets have taken place in highly specialised settings like sports leagues, fashion models market, doctors and nurses. These litigations will be discussed in the following sections. These cases show that so far litigations have been brought forward by sophisticated and high earning workers (Naidu, Posner and Weyl, 2018). However, in the recent past, competition law and labour market issues have been addressed by various antitrust agencies globally. In 2016, the U.S. Department of Justice (DoJ) even announced its intention to initiate criminal prosecution in anti-competitive agreements affecting the labour market.4 Similarly, the Hong Kong Competition Commission (HKCC) also released an advisory bulletin5 indicating that it has encountered several situations where businesses have engaged in employment-related practices which may give rise to competition concerns. In 2018, the Japan Fair Trade Commission (JFTC) released a report with discussions on the application of the Antimonopoly Act on human resources.6 The Organisation for Economic Cooperation and Development (OECD) also held a session in June 2019 to discuss antitrust concerns in the labour markets with a focus on the factors contributing in the creation of monopsony powers. Another follow up session was held in February 2020.7 In India, though concerns have been raised in the sports industry, this issue largely remains unattended by all stakeholders. Macroeconomists began to use models of monopolistic competition to explain how small costs of adjusting prices could give rise to business fluctuations (Akerlof and Yellen, 1985). This trend has started influencing labour economics with the argument that employers also have market power in the setting of wages (Bhaskar, Manning and To, 2002). The imbalances prevailing in the labour market have been compared to the traditional buyer power in a product market by Scheelings and Wright (2006). Criminal liability for anti-competitive agreements in employment is logical and prudent due to the economic effects of these practices; the justification for this was given by Davis (2018). Naidu, Posner and Weyl (2018) recommended the most suited antitrust remedies for labour market power. The restraints in the labour market and the evolving antitrust treatment in the United States were discussed by Stutz (2018). The extension of antitrust practices against workers in the gig-economy space has been brought forward by Steinbaum (2019). These discussions have primarily focussed on the situation in the United States. However, the challenges faced by the antitrust authorities in the employment sector worldwide still require extensive discussion. Through the analysis of different labour market conditions in India and other jurisdictions, this research aims to understand the application of competition law in employment in India and the need for all the stakeholders including the Competition Commission of India to be versed with its implications. A qualitative research methodology is adopted to examine the challenges faced in enforcing competition in the labour market through traditional tools and the measures to overcome these challenges. The anti-competitive practices resorted to by employers in the labour market have been divided into the following three parts for reaching a considerate conclusion: 1) Predatory Hiring 2) Anti-Poaching Agreements 3) Unilateral Conduct 2. Labour Markets It is important to understand the difference between traditional product/ service markets and labour markets. Factors relevant to both these markets are different. In economics, labour falls under the category of ‘factor market’. Also known as the input market, it refers to the factors of production or resources that companies require to produce their goods and services. In products markets, consumers are the buyers and businesses are the sellers; whereas in factor markets, businesses are the buyers. Anything relevant for making the final product like labour, raw material, capital, land, etc., is part of the factor market. Economic relationship of demand and supply is also different (Bhaskar, Manning and To, 2002). In a product market, high demand leads to an increase in the number of goods produced until the demand is met. However, this is not the case in the labour market where labour cannot be manufactured. Increase in wages will not automatically cause an increase in labour supply. From a competition law perspective, the same rules should apply for the procurement of goods and services as well as the acquisition of labour. Firms that compete for hiring or retaining the same labourers are competitors in the labour markets, regardless of whether these firms also offer goods and services that are in competition with each other (Yüksel and Salan, 2019). The factors which may be relevant in delineating a relevant labour market comprise skill, education, experience, wages, relocation, mobility costs, working conditions and other non-price factors. In several industries like Information Technology, Legal, Medical, specific skills are required, and the employees need to clear several stages for gaining qualifications and licences. A labour market can be defined as a group of jobs, between which workers can switch with relative ease, located within a geographic area usually defined by the commuting distance of these workers. Buyer Power Buyer power plays a particular role with regard to creation or strengthening of a dominant position. It can create a dominant position directly in the procurement market concerned. The monopsony model has established itself as the standard instrument for examining buyer power. It is based on the assumption that one powerful buyer comes across many suppliers (Burdett and Mortensen, 1998). In such a situation, the buyer can reduce his demand to cause a reduction in the procurement price. This simplistic model may fail in situations where both sides of the market are concentrated to a certain extent. The bargaining model applies in such situations, where bilateral negotiations determine the terms of the contract. Any gap between the strength enjoyed by the buyer and seller can allow the buyer to dictate the terms. In procurement markets like the labour markets, buyer power is less often expressed in the classical sense as market power affecting the opposite market side as a whole but more often in the form of bargaining power exercised bilaterally vis-à-vis individual suppliers. It is also suggested that only a player who can influence both sides of the market can be a dominant player in these markets. Dominant position on one side of the market has also been used to prove the dominance on the other side. The European Commission (EC)8 and Bundeskartellamt9 have relied upon this theory in the past. In one case, dominance in procurement markets was used to prove the existence of dominance in sales markets (and vice versa). Thus, one major source of market power in all types of markets is ‘concentration’, where only a few firms operate in a given market. Buyer concentration in the labour market creates monopsony or oligopsony in favour of employers. Traditional monopsony is clearly unrealistic since employers obviously compete with one another to some extent. ‘Oligopsony’ or ‘monopsonistic competition’ are the more accurate descriptions of such labour markets (Akerlof and Yellen, 1985). These can exist when only one or a few employers hire from a pool of workers. Once market power is gained by the employers, the perils of exploitation tend to creep in. As Adam Smith recognised, businesses gain in the same way by exploiting product market power and labour market power, enabling them to increase profits by raising prices in the products market or by lowering costs in the labour market (Smith, 1776). This exploitation is akin to the treatment of workers denounced by Karl Marx. He argued that workers were underpaid and subjected to poor working conditions (Marx, 1867). This treatment was possible to the ‘reserve army’ of the unemployed, replacement remained available at will for the employers. The extraction of the surplus derived by the employers by paying low wages was called exploitation. Anti-competitive practices are just more sophisticated forms of these exploitations. 3. Predatory Hiring In competition parlance, ‘employees’ are equivalent to assets of an organisation. One of the many ways in which a competitor can disrupt the functioning of an organisation is by inducing the employees including the key-managerial employees to terminate their relationships with their employer and join him. Antitrust concerns arise when this inducement is done with the purpose of harming rivals and attempting to monopolise. In the Indian context, if a competitor only hires the employees of its competitors to ensure that the competitor is unable to survive in the market such a practice would be ‘Abuse of Dominance’ as per Section 4 of the Competition Act, 2002. Predatory Hiring has been held to be anti-competitive as per Section 210 of the Sherman Act, 1890. The meaning of predatory hiring as defined in Universal Analytics, Inc. v. MacNeal-Schwendler Corp11 is still applied. As per this ruling predatory hiring occurs when talent is acquired not for purposes of using that talent but for purposes of denying it to a competitor. In this case, Universal Analytics, Inc., filed a claim alleging that Macneal Schwendler Corp. hired five of its key technical personnel only to cause harm to them. They relied upon a memo from the executive vice-president of Macneal which read “by hiring UAI employees, we wound UAI again”. The Court while adjudicating held though it appeared that one of the reasons for hiring these employees was to harm the plaintiff, however, due to the fact that these employees were sufficiently used by the hiring company ensured that no case of predatory hiring was made out. Two prong test was laid down by the Court which required the plaintiff to establish that (i) the hiring was made with predatory intent, (ii) clear non-use in fact. The test laid down in Universal Analytics continues to be applied, though in some cases the Courts have deviated on the reasoning that as per the Sherman Act, even an attempt to monopolise is enough for its breach. In West Penn Allegheny Health System, Inc. v. UPMC12, the Court held that UPMC being the dominant hospital in Pittsburgh attempted to monopolise the market for hospital services when it hired key physicians from the plaintiff. Court noticed that the salaries offered were well above the market rates and the finances available with the defendant were insufficient to pay these salaries without suffering losses. Resultantly, the Court held it to be a clear attempt to drive out the second largest hospital system out of the market. Critics like Page (2017) have even argued that a new “bona fide intent to use” test should be adopted in dealing with such allegations. Even before the enactment of the Competition Act, 2002, such a dispute arose between two leading beverage companies, namely ‘PepsiCo’ and ‘Coca-Cola’. The global rivalry between the two extended to India also in the early 1990s. PepsiCo alleged that Coca-Cola was unlawfully inducing its groups of key marketing and other strategic employees to breach and/ or terminate their employment contracts with PepsiCo and enter into employment contracts with Coca-Cola. The relief of injunction sought by PepsiCo was eventually not allowed by the Delhi High Court13 on the reasoning that ‘In a free market economy, everyone concerned, must learn that the only way to retain their employees is to provide them attractive salaries and better service conditions. The employees cannot be retained in the employment perpetually or by a Court injunction’. The matter before the Delhi High Court was agitated under the laws of Contract and the relief sought was under the law of Torts. The findings of the Court, as such should only be read in those contexts. The unfair practice of inducing employees of PepsiCo to drive the competitor out of the market could have been agitated under the Competition Act, 2002, if applicable, and may have led to different reasoning and conclusion by the Court. Other aspects of such a hiring would have become relevant under the Antitrust laws. Interestingly, there has been no case in the Indian context, wherein an enterprise has been found to be infringing the provisions of the Competition Act by indulging in predatory hiring. In 2016, Air India had approached the Competition Commission of India alleging that one of its rival airlines Indigo had indulged in predatory hiring by poaching its pilots. This case14 was closed under Section 26(2)15 of the Competition Act, 2002, holding it to be an employment issue raising no competition concern. When this case was heard in appeal16 by the erstwhile Competition Appellate Tribunal, the principle of predatory hiring was discussed in light of Sections 4(2) and 3(3)(b) and (c) of the Competition Act, 2002, however, the Appellate Authority was of the opinion that there was not enough data/information to establish predatory hiring. The appellants were given the liberty to approach the Commission once again, provided they could gather enough material to substantiate their claim. The jurisprudence on predatory hiring has not evolved in India thereafter. 4. Anti-Poaching Agreements On 20th October 2016, the Department of Justice (DoJ) of the United States released a guidance note for ‘Human Resource Professionals on How Antitrust Law Applies to Employee Hiring and Compensation.’17 Similarly, the Hong Kong Competition Commission and the Japan Fair Trade Commission have also released advisories18 indicating that they have encountered a number of situations where businesses have engaged in employmentrelated practices which may give rise to competition concerns. These advisories frown upon any agreement between competing firms which restricts employment from rival firms, sharing of remuneration details, fixing wages to lessen competition by stagnating transfers. Employees have been treated as consumers in the labour market and any agreement between firms to restrict movement of labour has been held to be causing an adverse effect on the employees by restricting their choice, salaries and other benefits. In September 2010, the Antitrust Division of the US DoJ filed a complaint19 against Google, Apple, Adobe, Intel, Pixar and Intuit before a district court in San Jose, California, alleging that their agreements not to solicit/ hire each other’s employees through ‘cold calling’ violated antitrust law. Cold calling is any solicitation for employment (by phone, email, letter or otherwise) directed to an employee who has not applied for an open position. Companies executing these agreements agree to notify each other when making offers to each other’s employees. The top executives of these companies were alleged to be involved in this conspiracy. The DoJ held that these agreements eliminated a significant form of competition to attract skilled employees, distorting the labour market and causing employees to lose opportunities for better jobs and higher pay. The companies agreed to pay US$ 415 million (Rs. 2,755 crore) claims in the class action lawsuit. Consequently, Apple and Google’s board of directors were hit with a shareholder derivative lawsuit for breach of fiduciary duty and harming the company by engaging in illegal anti-poaching agreements (Choukse, 2016). Some of the recent updates issued20 by the US DoJ show how nopoaching agreements are addressed by the US Antitrust Agency. On 3rd April 2018, the Antitrust Division filed a civil antitrust lawsuit against Knorr-Bremse AG21 and Westinghouse Air Brake Technologies Corporation (Wabtec). As per the complaint, these companies along with a third company Faiveley entered into no-poach agreements in 2009 and continued till 2015. These agreements were stated to be in violation of Section 122 of the Sherman Act. Private lawsuits were also filed by current and former employees of the companies. The defendants also moved a motion to dismiss the complaint and argued that no-poach agreements should be assessed under the rule of reason. This motion was dismissed23 and the defendants agreed to pay US$ 48.95 million in settlement.24 The DoJ has even extended the applicability of no-poach agreements to franchisor-franchisee agreements25, where the franchisor restrains the franchisee from poaching employees from the other franchisee of the same franchisor. DoJ maintains that a franchisor and franchisee are not automatically deemed to be a single entity and can be separate entities capable of conspiring within the meaning of Section 1 and such naked, horizontal no-poach agreements between rival employers within a franchise system are subject to the per se rule. The decision in this case is still awaited. The principle of no-poaching is not limited to an agreement to not hire from competing firms but it also extends to ‘wage-fixing’. Akin to a cartel which decides the prices or supply, in a ‘wage-fixing’ agreement the competitors try to reduce their costs by deciding upon the salaries and perks payable to their employees. Most recently, on 31st July 2018, the Federal Trade Commission (FTC) and the Texas Attorney General charged Your Therapy Source, a Dallas-Fort Worth26 company that provides therapist staffing services to home health agencies, with unlawfully colluding to limit pay for therapists and inviting other competitors to do the same. The European Union Member States have also been averse to nopoaching and wage-fixing agreements. Undue restrictions placed on anaesthesiologists by 15 hospitals in the Netherlands through a non-solicitation agreement were held to be in violation of the Dutch Competition law. The hospitals agreed not to poach each other’s trained anaesthesiologists with an additional restriction on employing any anaesthesiologist for a period of 12 months after his/her leaving a hospital part of the agreement.27 In 2010, in Spain, eight transportation companies were penalised for implementing co-ordinated strategies which included conditions on hiring employees.28 They were held liable under Article 1 of the Competition Act of Spain and Article 101 of the Treaty on the Functioning of the European Union. In yet another case of wage-fixing, arising from the same cause of action in 2016, modelling agencies were fined by both Italian and British Competition Authorities.29 No-poach agreements also surreptitiously get a nod from the antitrust agencies at the time of approval for mergers. In most mergers notified pursuant to an agreement between the parties, there is usually a nonsolicitation clause. This non-solicitation is used to restrain the acquired party from dealing with past clients and at the same time used to restrain the acquired party from poaching employees transferred to the acquirer. Such clauses may seem to be non-ancillary to the combination notified but a deeper look into such agreements may warrant scrutiny of the antitrust authorities. The European Commission permits non-solicitation clauses if they are directly related and necessary for the implementation of a merger.30 In Kingfisher/Großlabor31 merger, the sale-purchase agreement was supplemented with non-solicitation restrictions on two managers of GroBlabor. The EC accepted the reasoning provided by the parties to hold that such restrictions were necessary and in line with the objectives of the deal. Likewise, in the Imperial Chemical Industries/Williams32 merger for the acquisition of the home improvements division of Williams, the EC allowed the restriction on soliciting certain employees of Williams for a period of two years after the closing of the deal. At present, the Competition Commission of India also analyses the noncompete clauses forming part of the proposed combination. Such nonsolicitation clauses are part of the non-compete agreements and depending upon the scope of restrictions, the Commission may approve such clauses. The rationale is to allow the acquirer to derive the maximum benefits arising out of the combination. Due consideration is provided to the scope of these restrictions based on the time span and the geographic area for such restrictions. As per the guidance note33 published by the Commission, usually, the time period should not exceed 3 years and the scope should be limited to the current activities and the area covered by the acquired party. The Commission also initiated a consultation to decide if non-compete obligations should even be assessed at the time of competition assessment. The applicable law on the assessment of non-compete obligations in merger notifications may even change in the future. India hasn’t witnessed any case wherein two rivals have entered into a nopoaching agreement independent of a combination as contemplated under Section 5 of the Competition Act. 5. Unilateral Conduct The power of enterprises to control the activities of their employees/ affiliates gives rise to unilateral anti-competitive conduct in employment. Sports authorities which usually have a monopoly over the administration of a particular sport have been found to be on the wrong side of the competition law, both in India and globally. On 12th July 2018, the Competition Commission of India penalised the All India Chess Federation (AICF) for banning four registered players due to their participating in an unapproved tournament.34 The chess federation was affiliated to the World Chess Federation and solely responsible for all chess activities in India. The players were always subservient to the federation as the ratings and selections were controlled by the AICF. This order in itself was sufficient to caution all sporting bodies against unilateral control over player participation in independent tournaments. Internationally also, such restriction on players from participating in sporting events is frowned upon and penalised by antitrust authorities. In December 2017, the European Commission came down heavily on the International Skating Union (ISU) for imposing severe penalties up to a lifetime ban on athletes participating in speed skating competitions that are not authorised by the ISU.35 It was held that these rules that are in place since 1998 restricted the commercial freedom of athletes and potentially foreclosed the market for competing organisers. This action was brought up by two Dutch ice skaters who were threatened by the ISU with a life ban on participating in a league in Dubai. The ISU was directed to stop its illegal conduct within 90 days or pay up to 5 per cent of its average daily worldwide turnover in case of non-compliance.36 Following this in January 2019, another leading world sporting body the Fédération Internationale de Natation (FINA) allowed its swimmers to participate in race meetings organised by independent organisers.37 FINA, recognised by the International Olympic Committee (IOC) for administering international competition in water sports, was under pressure after independent suits were filed against it by the threatened swimmers and the independent league organisers for violating antitrust law. Blocking any new competitive league from entering into the market by not allowing premium players from participating was again the cause of action. The Board of Control for Cricket in India (BCCI) has also indulged in unilateral conduct to restrain its players from participating in rival cricket leagues or in cricket tournaments deemed to be unapproved as per the guidelines of the International Cricket Council. In 2007, when Zee Entertainment Enterprise attempted to foray into the world of cricket by organising a domestic league tournament named the Indian Cricket League (ICL), the BCCI took swift action and banned all players who participated in the league. State members were not allowed to provide grounds for matches and broadcasters who showed allegiance to this competing league were not allowed to participate in its own telecast rights bidding. The effects of abuse of dominant position by the BCCI were felt in real and the Indian Cricket League could not survive with such restrictions in the market. The league was ultimately disbanded in 2009. The BCCI was ultimately penalised by the Competition Commission of India and was directed to pay Rs. 522.4 million for abusing its dominant position for imposing restrictions that denied access to the market for ‘Organisation of Professional Domestic Cricket League/ Events’.38 However, the interest of the players was never the consideration for the decision of the Commission in this case. Consequently, even though the Order was passed and the appeal is pending, the BCCI did not hesitate in banning, in May 2019, a first-class cricketer Rinku Singh for participating in a T-20 tournament in Abu Dhabi without the prior permission of the BCCI.39 The cases in the sports industry signify that unilateral conduct is possible when employers possess some labour market power that allows them to dictate terms. Labour market power in many ways is similar to a product market power. In the case of product market power, one seller or very few sellers having the product can determine the price of the product. Similarly, in case of employment which is governed by only one or few employers, it allows the employers to exert some pressure on the employees. Another situation where unilateral conduct harms the employee more may arise in sectors governed by the Government. Independent workers could be dictated when their employment is dependent. The farming sector in India is a prime example of such a situation. As per the Agricultural Produce Market Committee (APMC) regulation, farmers could only sell their crop to buyers who were licensed by the State Government. This restricted the free flow of the farmer’s crop as well as his will to engage with different traders. Consequently, buyers could exert pressure and decide the terms. In September 2020, the Parliament of India enacted two Acts, which allow the farmers to sell their produce directly to anyone in the country without an intermediary. Though the actual effects of these legislations are yet to be recognised, they have significantly increased their options and removed the adverse buyer power that was prevalent in favour of the traders. It is interesting to note that these legislations have faced agitation by the farmers themselves, mainly on the issue of continuity of Minimum Support Price (MSP). Labour Issues in Gig Economy In addition to these traditional setups, anti-competitive practices are also applicable in gig economies. It is often defined as labour that provides organisations or individuals access via online platforms to pool of workers willing to carry out paid tasks (Valenduc and Vendramin, 2016). This normally takes the form of fragmented micro-tasks provided through platforms that connect online-based workers with hiring firms. A platform is a business which creates interactions between producers and consumers and provides an open participative infrastructure that facilitates the exchange of goods and services (Parker, Alstyne and Jiang, 2016). As such, it can be considered an online labour-brokerage that acts to coordinate the market of a worker with a requester (Collier, Dubal and Carter, 2017). The process, therefore, enables independent workers to provide services through online platforms rather than traditional employment. Independent contractors seem to be hired under the garb of freedom and independence. Online business platforms like Uber, Swiggy, Ola, Zomato, Amazon, Urban Company, etc., employ independent workers without any protection derived from labour laws. At the same time, they may be entirely controlled by employers/customers. The ability of these platform owners to dictate the terms of the transaction and review the relationship based on subjective ratings given by the customers allows unprecedented power to the employers. Independent workers cannot even avail the benefits of collective bargaining. In a United States case in 2016, an Uber customer initiated antitrust suit40 against the company alleging price and wage-fixing conspiracy with its drivers. It was claimed that Uber decides the price of the ride, the share of the driver and the allocation of customers to each driver. Cartelisation through the hub and spoke arrangement was the alleged modus operandi of the company. Uber refuted these allegations by contending that it is only a software company that provides its platform for customers and independent drivers to connect. That they neither provided transportation services to the customers nor employed the drivers. The case never proceeded to trial due to the arbitration clause, however, Uber commissioned two economics papers to suggest that the control exercised over the drivers benefits ‘consumer welfare’. Like the traditional markets, consumer welfare appears to have gained importance over labour welfare and used as a defence. These platforms are looked upon as providing services that make lives convenient. Antitrust agencies are also hesitant in intervening by suggesting that these markets are at nascent stages and the actual scope is yet to be realised.41 Interestingly, even in the gig economy space, the antitrust cases have been brought by customers with allegations of cartelisation and not by the workers dealing with unilateral conduct by the companies. The discussion in the introduction on the lack of employee-initiated antitrust litigation is relevant here also. India witnessed strikes42 and protests against unfair treatment by cab ride apps but no antitrust litigation was initiated by the drivers. Again the lack of resources and ignorance regarding the applicability may be the reasons. One antitrust litigation against an online platform that has received some attention from the Competition Commission of India in the e-commerce sector is against ‘Make My Trip’. In two separate information(s) filed by the Federation of Hotel & Restaurant Associations of India and Treebo Hotels, the Commission ordered43 detailed investigation after observing that the exclusionary practices adopted by the platform prima facie appear to be anti-competitive and abuse of dominance. The informants in these cases are also hotel owners and hotel management companies. The antitrust investigation initiated against Amazon and Flipkart by the Commission on the complaint filed by Delhi Vyapar Mahasangh44 comes closest to resembling an employment-related antitrust litigation. The members of the informant society comprise many Micro, Small and Medium Enterprises (MSMEs) traders who rely on the trade of smartphones and related accessories. These traders alleged discrimination in favour of the preferred sellers of Amazon and Flipkart. Though not employment in the traditional sense, the relationship between the traders and the platform for connecting with the buyers is akin to the labour market in the gig economy. All the above situations arise in cases where the market is concentrated allowing the concentrated player more power to unilaterally decide the terms and conditions. 6. Conclusion Importance of competition in employment has not been fully appreciated by the regulators. Whilst the authorities have focussed on the traditional factors influencing competition, labour market power and its consequences have largely been ignored. Unlike the new challenges posed by technology, labour market power has existed from the times when antitrust laws were coined to break big trusts in the United States. Those big trusts like the e-commerce giants in the modern era exerted similar pressures in the employment sector. Disintegrating the highly concentrated trusts may have even indirectly had an impact on the free flow of labour without stringent terms and conditions in the past. However, the recent cases of anti-competitive practices in the labour market require a course correction. Imbalance in labour market power is also against the principle of equality and can have far-reaching consequences like political conflicts. A recent tragedy in the Indian Film Industry has even raised questions on the onerous terms of a contract45 on the mental health of individuals. Impact on the economy is akin to the impact caused by product power imbalances. The modern economic landscape dominated by e-commerce does not allow the employers the benefits of the traditional labour laws. Collective bargaining as a remedy has also failed.46 The onus is upon the antitrust regulators to share the burden and in combating the adverse effects of power imbalance in the labour market. The relation between labour antitrust claims and consumer welfare needs an immediate focus of the regulators. The current competition framework seems adequate to address any anti-competitive conduct in the employment sector. It is primarily the focus which needs to be stretched towards this matter in addition to the traditional topics of antitrust discussions. Recent trends have shown the inclination of several jurisdictions to venture into the systematic scrutiny of competition issues in employment. The world is witnessing convergence of economies allowing unprecedented movement of both skilled and unskilled workers. The antitrust regulators have the opportunity to play an instrumental role in ensuring that the balance is maintained in the labour market and anticompetitive practices in employment are not excused behind the veil of economic growth.

#### The plan is key to India’s economy.

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India emerged as the world’s [fifth largest economy](https://www.weforum.org/agenda/2020/02/india-gdp-economy-growth-uk-france/) by nominal GDP last year, leapfrogging France and the United Kingdom, according to the [International Monetary Fund](https://www.imf.org/external/datamapper/datasets/WEO). PricewaterhouseCoopers’ “[The World in 2050](https://www.pwc.com/gx/en/issues/economy/the-world-in-2050.html)” report forecasts India’s GDP will rise to second worldwide within 30 years. However, the authors also state that emerging economies like India will have to strengthen their institutions and infrastructure to enable them to actualize a promising growth trajectory. India’s archaic labor laws are not considered industry friendly and have been holding back its economy from growing at its full potential. India’s labor laws reflect a mindset of the state exercising negative control over business enterprises. The poor pace of its notoriously rigid labor reforms has surely been a dampener on attracting more foreign direct investment (FDI) from the United States and other developed countries. Even domestic investments have suffered on this account. Covid-19-related labor disruptions could worsen the situation and limit the political space for the much-needed economic reforms. Despite its GDP growth, India had witnessed its highest unemployment rate in the last 45 years, according to the latest Government of India’s [Periodic Labour Force Survey](https://www.indianeconomy.net/tag/periodic-labour-force-survey-plfs-of-the-nsso/) (PLFS) and corroborated by the [Centre for Monitoring Indian Economy’s 2019 data](https://www.thehindu.com/business/Economy/india-unemployment-rate-3-year-high-cmie-data/article29855098.ece). Now, with the contraction in its economy due to Covid-19, India’s unemployment rate has soared. The country’s labor force participation rate has also fallen, according to the PLFS report. The absolute size of India’s labor force has been the subject of debate and stood somewhere between 470 to 520 million before the lockdown. During April and May 2020, India saw a large-scale contraction in its labor force, hopefully a transient phenomenon that will lessen with the easing of the lockdown. In any case, such an unprecedented economic downturn in one of the world’s largest economies, coupled with daunting challenges in the midst of a global pandemic, will lead to its own set of ripple effects. It is likely to have an impact on economic and trade relations with the rest of the world, as exemplified by a recent provision for India-made defense goods and import restrictions. A Variegated and Informal Labor Market India’s labor and employment data architecture is not fully reliable due to crucial information gaps. As a result, most policymakers rely on estimates extrapolated from somewhat questionable data. Despite these limitations, it is evident that almost 44 percent of India’s labor force works in agriculture, a sector that contributes [a mere 15.4 percent to the country’s GDP](http://statisticstimes.com/economy/sectorwise-gdp-contribution-of-india.php). Similarly, 24 percent of the workforce is engaged in industry (including the manufacturing sector), which accounts for 23.1 percent of India’s GDP. The service sector employs 32 percent of the labor force yet accords as much as 61.5 percent to the country’s GDP. This sectoral differentiation also gets reflected in their earnings and well-being, or lack thereof. Since agriculture is the least remunerative segment with unstable growth, its workers have been endeavoring to enter other sectors but with limited success because of a lack of opportunities. It is a bit simplistic to think that the complex web of India’s federal and state labor legislations have been useful in protecting the interests of workers, especially since such stringent laws have primarily been [responsible for 93 percent of the country’s workforce remaining in the informal and unorganized sector](https://www.businesstoday.in/sectors/jobs/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt/story/364361.html), as per India’s Economic Survey of 2018-19. This engenders poor adherence to minimum wages and severely inadequate access to social security. Such a large-scale informalization of labor is unique to India. It temporarily helps industry but results in many in the workforce leading lives of almost unimaginable deprivation. Indian industry has found workarounds to avoid problems emanating from its labor laws. Over the last few decades, companies have resorted to large-scale temporary hires, contract labor, daily wagers, jobbing work, outsourcing, and even artificially splitting business enterprises into smaller entities to avoid applicability of such laws. Some labor sector experts suggested that after the introduction of the Goods and Services Tax in 2017 and the demonetization of high-denomination currency in 2016, the situation would improve since businesses would have new incentives to become part of the formal economy. On the contrary, however, the informalization of labor in India seems to have [increased](https://www.oxfamindia.org/sites/default/files/2019-03/Full%20Report%20-%20Low-Res%20Version%20%28Single%20Pages%29.pdf) as there has been little respite from the clutches of outdated labor laws. Investor-Friendly Labor Reforms The Industrial Disputes Act of 1947 has been a big roadblock for the closure of industrial units and the layoff of workers if a business employs more than 100 workers. Given the uncertainties with most businesses, only some aggressive investors from the United States or other developed countries have been willing to tolerate a situation that, in the event of the enterprise collapsing, would require the investor to remain straddled with workers for whom exit options are either closed or cumbersome. Labor laws remain an important factor for risk-averse investors considering India as a production hub. Recent months have seen some movement on this front that may eventually mean that only those firms employing more than 300 workers would require the government’s concurrence prior to retrenching their workers in the future. There are many such pain points related to labor laws. The Contract Labor Act and the Industrial Employment Act have several elements of rigidity. The Small Factories (Regulation of Employment and Conditions of Services) Bill planned a few years ago, under which factories with a labor force of 40 workers or less were to be brought under a simpler regulatory regime with a waiver on the applicability of 14 federal labor laws, has been a non-starter. This idea should be revived with an increased labor threshold and tracked to closure. NITI Aayog, the government’s think tank, has been [advocating extensive labor reforms](https://thewire.in/labour/niti-aayog-pitches-for-labour-reforms-higher-female-participation)—both at the federal and state level. However, a sweeping withdrawal of most labor laws by states almost overnight during the recent lockdown and for a limited duration appears far too drastic. Well-thought-out and liberal labor laws would go a long way in ensuring workers’ welfare as well as in soliciting FDI into India. Labor is a subject on the Indian Constitution’s concurrent list, so both the federal and state governments must work in tandem on reforms. The federal government should make good on its commitment to rationalize and simplify the 44 central laws into four codes: salary and wages, social security, industrial relations, and health and occupational safety. The [Industrial Relations Code](https://www.prsindia.org/billtrack/industrial-relations-code-2019) was introduced in the Indian Parliament in November 2019 but is now lying with the Standing Committee. Work on all these four codes has progressed but should be speedily taken to its logical end as the post-Covid-19 economy creates jobs in tandem with expected economic growth. Many labor laws are under the state domain. Based on the recent work on labor reforms undertaken by the Government of India, there is a lack of clarity if federal laws would become more paramount and if state powers on labor issues would diminish. Whether states would retain the jurisdiction to tweak the laws based on their local requirements remains ambiguous. If the role of states in labor laws remains unchanged, then the Government of India should draft a unified model labor law for states, replacing many archaic laws for time-bound adoption by the state governments. Once these are enacted, several investors who dread the unfriendly Indian labor laws would be incentivized to invest, which should create large-scale employment, especially in labor-intensive industries. In addition, India could attract a significant component of investments and create jobs emanating from growing anti-China sentiment worldwide. The velocity of action on this front would make or mar India’s case to become the next workshop of the world. Recent State-Level Rollback of Labor Laws Ostensibly as a response to the Covid-19-triggered societal lockdown, the Indian states of Uttar Pradesh, Madhya Pradesh, Gujarat, Rajasthan, Maharashtra, Odisha, Punjab, and Goa have [amended some of their labor laws](https://www.financialexpress.com/economy/labour-reforms-laws-rules-change-uttar-pradesh-up-madhya-pradesh-rajasthan-himachal-pradesh-punjab-kerala-coronavirus-reforms/1952023/) by changing provisions or suspending some. These include states ruled by the Bhartiya Janata Party (BJP) as well as the Indian National Congress, the national opposition. In Uttar Pradesh, Rajasthan, Gujarat, and Himachal Pradesh, industrial units were allowed to deploy workers for 72 hours a week, a 24-hour increase from the earlier norm of 48 hours. Experts argue this is [not in keeping with the International Labor Organization’s convention](https://www.business-standard.com/article/economy-policy/labour-law-changes-in-india-should-adhere-to-global-standards-ilo-120051301663_1.html). In a few states, there is a lack of clarity as to whether industry necessarily has to pay overtime for the incremental work. India’s most populous state, Uttar Pradesh, has suspended most labor regulations for three years, subject to presidential assent. While Indian industry has generally welcomed these changes, they have not been received well by most labor unions, including the [Bharatiya Mazdoor Sangh](https://www.hindustantimes.com/india-news/rss-backed-bharatiya-mazdoor-sangh-protests-against-changes-to-labour-laws-petitions-president/story-8DEdU1VUlFvSjNg4Eg3iWI.html), which is supported by the BJP’s primary ideologue, the Rashtriya Swayamsevak Sangh (RSS). Observers and experts have argued that [such retrograde measures are unconstitutional](https://www.businesstoday.in/bt-buzz/news/bt-buzz-why-uttar-pradesh-labour-law-ordinance-is-unconstitutional/story/403509.html) and may possibly even take India back to the slavery and barbarism of medieval times. The complete removal of labor regulations could trigger a backlash against even modest, helpful changes in the future. Further, while these sweeping rollbacks of labor laws by some Indian states may be framed as business friendly, they also signal a general environment of policy instability and recklessness, which may dampen investor sentiment. Investors tend to respond positively to comprehensive and well-thought-out legislative changes and unfavorably to unpredictability. Sustainable long-term foreign investors are unlikely to imperil their business strategy, perceiving flip-flops in labor regulation as an untenable risk and an impediment to continuity, especially given India’s onerous laws that make it difficult for firms to exit in the event of failure. Key to fostering industry’s trust is to solicit and give value to their inputs even when governments need to respond to unique and dynamic circumstances. Businesses would much rather operate in a predictable and sensibly liberalized regulatory environment than be shortsighted enough to assume that the Wild West of suspended labor laws would remain indefinitely. This is especially the case since even a preliminary analysis of the political economy of Indian labor unions, given their [often symbiotic linkages](https://www.jstor.org/stable/2645356?seq=1#metadata_info_tab_contents) with their parent political outfits, would suggest they have enough influence to effectively advocate for a restoration of the revoked legislation. Moreover, both organized and unorganized labor may emerge as more reactionary and combative in the future if labor laws are harshly withdrawn, harming the long-term interests of industry in achieving policy and legislative change in the event the government is strong-armed into restoring en masse the very labor laws that were revoked. Vulnerability of Migrant Workers The lockdown has made clear one of the dangerous manifestations of the informalization of labor in India—the [challenges migrant labor face](https://counterview.org/2020/05/20/migrant-workers-amidst-covid-19-pandemic-and-lockdown-myriad-misery-desperate-exodus/). Migrant workers are often ignored by planners and policymakers. Large-scale reverse migration triggered by the Covid-19 slowdown has accentuated their difficulties in receiving public services. Migrant labor is seen in large numbers in industrial clusters, construction sites, and infrastructure projects. They keep the wheels of industry running, build highways, and create infrastructure. However, migrant labor remains marginalized in India’s political economy despite their cardinal role in nation-building. Having experienced challenges, and with meager prospects in the urban economy, a significant proportion of migrant laborers have returned to their ancestral homes, often hundreds or even thousands of miles away. It appears that some of them are [unlikely](https://theprint.in/india/more-than-half-of-migrant-workers-ready-to-come-back-to-work-finds-iim-survey/423238/) to return to metropolitan areas, industrial clusters, or infrastructure sites soon. Indian industry, of all sizes, would therefore have to reconcile with a delay in the resumption of full-scale industrial operations. A Case for Fairness and Equity Labor regulation should balance the interests of both industry and workers in an equitable manner. Basic social security measures to take care of sickness, accidents, old age, and unemployment need to be extended to India’s informal workforce as well. India should seriously explore instituting unemployment insurance and the statutory minimum wage at the national level to cover all categories of workers. Reform is also required to ensure safe working conditions for Indian workers. Livelihood opportunities in India’s gig economy have [grown the fastest in last few years](https://www.investindia.gov.in/team-india-blogs/gig-economy-shaping-future-work). While most gig economy workers may not strictly be classified as employees in the legal sense, laws should provide for at least a basic social security measures to be funded by the companies. India’s low-skilled labor force is physically on the move while governments at every level are dramatically altering labor regulations. These two simultaneous shifts could dramatically impact India’s overall reform program and economic prospects. While there is no denying that industry-friendly labor laws are an absolute necessity in India, the post-reform labor laws should not just be seen as paving way to an easier “hire-and-fire” policy. Fostering trust through transparent and frank multi-stakeholder dialogue is critical. It is a tough balancing act between wantonly implementing the minimalist and simpler laws advocated by overseas investors and ensuring an appropriate safety net for workers. The government should convince workers that their constituency is being addressed first through these reforms, which would benefit them as India eventually gets into a high-growth trajectory, creating many more jobs in the employment-starved economy.

#### Indian economic strength deters China along the India-China border---military buildup and signal of resolve diffuses conflict.

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India’s decision to move [50,000](https://www.bloomberg.com/news/articles/2021-06-27/india-shifts-50-000-troops-to-china-border-in-historic-defense-shift) additional troops to its border with China bolsters its ability to protect itself against Chinese aggression. It is a belated response to China’s actions [last year](https://www.bbc.com/news/world-asia-57234024), when the Chinese army [surprised](https://www.reuters.com/article/us-india-china-military-families-insight-idUSKBN2460YB) ill-prepared Indian soldiers and occupied several square miles of Indian territory in the Ladakh region to build roads and fortify military encampments. The hope of some Indian policymakers to resolve the matter diplomatically has not so far been fulfilled. Several rounds of military and diplomatic negotiations since April 2020, when the Chinese incursions started, have yielded little result. Any willingness on India’s part to deal forcefully with China would be welcomed in the U.S., where successive administrations have sought to integrate India into America’s Indo-Pacific strategy. Several years of an India-U.S. entente cordiale has been premised on India standing up to China. After all, with a population of more than one billion, India is the only country with enough manpower to match that of China. China sees India as a potential rival and covets parts of Indian territory. China [occupied](https://www.reuters.com/article/idINIndia-43780820091108) 15,000 miles of Indian territory in the Aksai Chin section of Ladakh after war in 1962. China’s desire for influence in South Asia and the Indian Ocean Region challenges India in its backyard, setting off [competition](https://www.tandfonline.com/doi/abs/10.1080/09700160801886314) for the same sphere of influence. But China’s phenomenal economic growth, coupled with India’s inability to keep pace, has hampered India’s ability to respond to China strategically. Even now the moving of troops to Ladakh is a tactical maneuver not backed by a clear strategic plan. On [four](https://www.washingtonpost.com/business/why-chinese-and-indian-troops-are-clashing-again/2020/09/11/c5939466-f402-11ea-8025-5d3489768ac8_story.html) occasions since 2012, China has indulged in salami-slicing along the largely un-demarcated India-China border. India’s response each time has been limited to diplomatic negotiations with limited military pushback. There is a co-relation between relative economic strength and China’s willingness to flex its muscle. Between 1988, when India and China signed a series of agreements to restore relations, and 2012, the border between India and China remained by and large quiet. During that period, the size of the two countries’ economies was not huge. In 1990, India’s GDP stood at $320 billion and China’s GDP at $413 billion. By 2012, China’s GDP had grown to $8.5 trillion, seven times larger than India’s $1.2 trillion economy. The [change](https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/chinas-rising-support-for-pakistan-and-their-collusion-may-affect-our-interests-says-former-nsa-shiv-shankar-menon/articleshow/82234601.cms) in China’s policy after 2012, encouraging its troops to use force against India along the border, coincided with the rise in China’s military and economic power and its impact on the relative balance of power with India. Like many in the West, India during the 1990s had bought into the view that deeper economic and diplomatic engagement with communist China would help maintain peace between the two Asian giants. But the India-China border dispute could not remain on the back burner as China became more aggressive in the wake of growing economic and military power. India can no longer rely solely on diplomacy to deal with China. It will soon have to build and deploy hard power to deter the Chinese. The recent deployment along the Ladakh border could mark the beginning of that process. With the latest addition, 200,000 of India’s more than a million strong army now face China along the 2,167-mile border. By way of comparison, 600,000 Indian troops are positioned along the 2,065-mile, fully fenced and fully demarcated border with Pakistan. It is inconceivable that any attempt by Pakistan to take territory would go unretaliated by India. While India’s attempts over the last year have been to convince China, primarily through diplomatic engagements, to return the border to status quo ante, most [military](https://www.orfonline.org/research/eastern-ladakh-the-longer-perspective/) and [strategic](https://www.lowyinstitute.org/publications/crisis-after-crisis-how-ladakh-will-shape-india-s-competition-china) experts argue that China has no interest in resolving the border dispute with India. India has for far too long acquiesced to Chinese aggression without sufficient retaliatory military action. India may not seek to provoke China into an all-out war, but it needs to find a sweet spot between ignoring and provoking. The United States and its allies, too, would like India to act like a major power in not taking Chinese provocations lightly. Western democracies and Japan have viewed India as an ideal partner and future ally in Asia and the Indo-Pacific. India has consistently been a democracy, shares pluralist values with the United States, and its embrace of free market reforms since 1992 have created an opening for expanded economic ties. India also shares America’s concerns about China’s rising power. In developing a pivot to Asia or an Indo-Pacific policy, successive U.S. administrations have assumed that a shared concern about China makes India a natural American ally. India-U.S. relations were referred to as the “[defining](https://www.google.com/search?q=obama+india+defining+partnership+of+21st+century&rlz=1C1GGRV_enUS751US751&oq=obama+india+defining+partnership+of+21st+century&aqs=chrome..69i57j33i160j33i299.7702j0j7&sourceid=chrome&ie=UTF-8) partnership of the 21st century” under President Obama. The Trump administration’s [2017](https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf) National Security Strategy spoke of India as a “leading global power” and a strong “strategic and defense partner.” The Biden administration’s [March](https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/03/interim-national-security-strategic-guidance/) 2021 “Interim National Security guidance” has described the “deepening partnership” with India as being critical to America’s “vital national interests.” But the Indo-Pacific policies of both the Trump and Biden administrations have focused on maritime security, ignoring India’s challenge from China on the continental landmass. China views India as an inward-looking democracy that has yet to focus on economic growth or military prowess. Only an expansion in India’s economy and military capability would convince China’s leaders to view it differently. Moreover, the two decades of celebrating convergence of democratic values and voicing of strategic concerns by Washington and Delhi now needs to be followed up with specific steps to counter Chinese hard power with Indian muscle.

#### That escalates.

Jeffrey Gettleman et al 20. Jeffrey Gettleman is The Times’s South Asia bureau chief. Hari Kumar is a reporter in the New Delhi bureau of The New York Times. Sameer Yasir is a reporter for The New York Times. “Worst Clash in Decades on Disputed India-China Border Kills 20 Indian Troops”. The New York Times. 6-16-20. https://www.nytimes.com/2020/06/16/world/asia/indian-china-border-clash.html

NEW DELHI — The worst [border clash between India and China](https://www.nytimes.com/2020/06/17/world/asia/india-china-border-clashes.html) in more than 40 years left 20 Indian soldiers dead and dozens believed captured, Indian officials said on Tuesday, raising tensions between nuclear-armed rivals who have increasingly been flexing their diplomatic and military muscle. For the past several weeks, after [a series of brawls](https://www.nytimes.com/2020/05/30/world/asia/india-china-border.html) along their disputed border, China and India have been building up their forces in the remote Galwan Valley, high up in the Himalayas. As they dug into opposing positions, adding tinder to a long-smoldering conflict, China took an especially muscular posture, sending in artillery, armored personnel carriers, dump trucks and excavators. On Monday night, a huge fight broke out between Chinese and Indian troops in roughly the same barren area where these two nations, the world’s most populous, had fought a war in 1962. Military and political analysts say the two countries do not want a further escalation — particularly India, where military forces are nowhere near as powerful as China’s — but they may struggle to find a way out of the conflict that does not hint at backing down. Both countries and their nationalist leaders, President Xi Jinping of China and Prime Minister [Narendra Modi](https://www.nytimes.com/2020/06/17/world/asia/india-china-border-clashes.html) of India, have taken increasingly assertive postures that pose real risks of the conflict spinning out of control. “Neither PM Modi or President Xi want a war, but neither can relinquish their territorial claims either,” said [Ashley J. Tellis,](https://carnegieendowment.org/experts/198) a senior fellow at the Carnegie Endowment for International Peace in Washington. What’s happening along the Himalayan border is an unusual kind of warfare. As in the brawls last month, Chinese and Indian soldiers fought fiercely without firing a shot — at least that’s what officials on both sides contend. They say the soldiers followed their de facto border code not to use firearms and went at each other with fists, rocks and wooden clubs, some possibly studded with nails or wrapped in barbed wire. At first, India’s military said only three Indian troops had been killed in the clash, where the Ladakh region of India abuts Aksai Chin, an area controlled by China but claimed by both countries. But late Tuesday night, a military spokesman said that 17 other Indian soldiers had succumbed to injuries sustained in the clash, bringing the total dead to 20. An Indian commander said dozens of soldiers were missing, apparently captured by the Chinese. Indian television channels reported that several Chinese soldiers had been killed, as well, citing high-level Indian government sources. Chinese officials did not comment on that. It’s not clear what India can do now. Mr. Modi and his Hindu nationalist party have pursued a forceful foreign policy that emphasizes India’s growing role in the world and last year, after a devastating suicide attack that India blamed on a Pakistani terror group, Mr. Modi ordered airstrikes on [Pakistan](https://www.nytimes.com/2020/06/29/world/asia/pakistan-stock-exchange-shooting.html), bringing the two countries to the brink of war. But India is in no shape to risk a war against China — especially now, as it slips deeper into the economic and health crisis caused by the coronavirus, which has cost the country more than 100 million jobs. “Whatever India might want to do it’s not in a position to do,” said Bharat Karnad, a professor of security studies at the Center for Policy Research at New Delhi. “The Modi government is in a difficult position,” he said. “This is bound to escalate.” And, he added, “we are not prepared for this kind of escalation.” Mr. Xi has been doubling [down on China’s territorial claims across Asia](https://www.nytimes.com/2020/05/24/world/asia/china-hong-kong-taiwan.html), backing up arguments with the threat of force or sometimes even the use of force. In recent weeks, the Chinese have tightened their grip on the semiautonomous region of Hong Kong; menaced Taiwan; and sunk a Vietnamese fishing boat in the South China Sea.

### FTC---1AC

#### Advantage 3 is FTC Credibility.

#### FTC promised labor protection now---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.

#### Hopes are pinned on Khan---FTC will fail unless Congress rewrites the CWS.

Bhaskar Chakravorti 7/7/21. Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. "Lina Khan Has Her Own Antitrust Paradox". Foreign Policy. 7-7-2021. https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

A poisoned chalice is not the most welcoming of gifts for a new chair of a major federal agency. But that is what legal scholar Lina Khan has been handed as she arrives at her office at the Federal Trade Commission (FTC), with media coverage more befitting a rock star than a regulator. She is breathlessly described as a legal wunderkind and her “Amazon’s Antitrust Paradox” may already be the most widely talked about note in the history of the Yale Law Journal. Even Sen. Ted Cruz said he looks forward to working with her—and you know that puts her in an extremely select club. The clock is ticking on her very first assignment—to refile an antitrust complaint against Facebook and convince a federal judge to reconsider a complaint he so expeditiously threw out. Khan has under 30 days.

The best thing Khan can do? Nothing.

Congress ought to make the next move and do the responsible thing by getting its act together and reaching an agreement over a slate of bills it has been bickering over, creating a modern regulatory infrastructure for today’s tech. U.S. lawmakers ought to stop cheering Khan from the sidelines and egging her into a legal skirmish. Instead, they need to do the hard work of taking the longer view—bringing antitrust law to the digital age before refiling another complaint. Unless our lawmakers create the right framework and agency responsible for regulating the digital industry, Khan’s FTC—and U.S. consumers—will be drawn into near-term battles while the actual war rages on.

Here is the plot so far and what must be done.

The Facebook antitrust rewrite Khan is being pushed into is fraught with problems. The FTC, under the previous administration, rushed through a lawsuit against Facebook in December 2020, alleging the company’s acquisitions of Instagram and WhatsApp were anti-competitive. Regardless of the merits or demerits of Facebook’s purchases, a federal judge did not buy it. He did offer a 30-day period for revising and refiling.

To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have argued the agency just needs to be more explicit about its definition of the market and the data it is relying on.

It is useful to recall that, as the judge threw out the complaint, he also ruled that “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case.

Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to 60 percent when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned study found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are not regularly reported. No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.

One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to play fast and loose with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing standard for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in intrusive or abusive ways? Ultimately, the FTC and the courts would have decide if customers are getting a good value in exchange for their data.

Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has argued that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition.

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

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

Marianela Lopez-Galdos 7/28/21. Global Competition Counsel at the Computer& Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

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.

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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:

### Plan---1AC

#### The United States federal government should substantially increase prohibitions on private sector business practices that violate an antitrust worker welfare standard.

### Solvency---1AC

#### Contention 4 is Solvency.

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

Firat Cengiz 20. School of Law and Social Justice, University of Liverpool. "The conflict between market competition and worker solidarity: moving from consumer to a citizen welfare standard in competition law". Cambridge Core. 10-8-2020. https://www.cambridge.org/core/journals/legal-studies/article/conflict-between-market-competition-and-worker-solidarity-moving-from-consumer-to-a-citizen-welfare-standard-in-competition-law/6E783D1FC4BAB5605DFABCD17FBE3F35

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

## Modeling

## FTC

## Nommo CP

#### Perm do both---Nommo alone isn’t enough---revolutionary politics requires being able to understand how to actually engage with the state.

Lemelle 93 [Sidney, professor of history at Pomona College, “The politics of cultural existence: Pan-Africanism, historical materialism and Afrocentricity”, *Race & Class* 35.1, July, pp. 93-112]

In revolutionary nationalist fashion, Asante acknowledges ’non-free people, who are exploited by ruling classes ... are challenged to struggle against structural discourse that denies their right to freedom and, indeed, their right to exist’.5’- Yet, borrowing ’important theoretical impetus’ from the cultural nationalist, Maulana Ron Karenga, Asante maintains ’freedom is a mental state’. He advocates ’the empowering of the oppressed by listening to their voices’ through the use of the ’African’ concepts of nommo (Akan) ’the generative and productive power of the spoken word’, and *Njia* (Kiswahili) ’the ideology of victorious thought. 53 He states confidently: ’To the degree that [Afrocentricity] is incorporated into the lives of the millions of Africans on the continent and in the Diaspora, it will become revolutionary.’-’ While it may be true that the pen (or in this case the nomo) is more powerful than the sword, it would appear, given the power of the capitalist state, that one must go beyond rhetoric to become ’revolutionary’ and effect change in a sexist, classist and racist society.

#### Perm---do each---our strategies aren’t mutually exclusive but are a form of “writing together separately” that acknowledges cultural positioning without assimilation

Frank and McPhail 05 (David – Professor of Rhetoric in the Robert D.Clark Honors College at the University of Oregon, and Eugene – Professor of Interdisciplinary Studies in the Western College Program at Miami University in Oxford, Ohio, “Barack Obama’s Address to the 2004 Democratic National Convention: Trauma, Compromise, Consilience, and the (Im)possibility of Racial Reconciliation,” Rhetoric & Public Affairs 8(4):571-593, http://blog.umd.edu/tpg/files/2012/08/FrankMcPhail1.pdf)

We approach these two reasonable responses to Obama’s speech as an experiment in rhetorical criticism, David A. Frank as a white American of Jewish and Quaker heritage, and Mark Lawrence McPhail as an African American influenced by Eastern spiritual philosophies. As rhetorical scholars **we share** both **an interest in** collaboration **and** a willingness to weave together voices **that have different interpretations** of Obama’s address **into a** narrative that results in what Chaïm Perelman and Lucie Olbrechts-Tyteca call a “contact of minds.”14 **We acknowledge that our judgments** of the Obama address **are influenced by our** ethnic and **cultural backgrounds**, **and** accordingly **we** “write together separately.”15Ultimately, **we see our effort as** both **a problematic and** a potentially **fruitful endeavor to address** rhetorical theory and **public discourse as they deal with** issues of **race**. While we disagree on many points about Obama’s speech, we nonetheless agree on the importance of, and need for, racial reconciliation.

#### Authenticity Testing---black people who aren't speaking Nommo are presumed to be speaking a dead white language---turns their offense

Clarke 4 [Lynn, professor of communication at Vanderbilt, “Talk About Talk: Promises, Risks, and a Proposition Out of Nommo”, *The Journal of Speculative Philosophy* 18.4, pp. 317-325]

Returning to the question of creative power's compass—Yancy's account of *Nommo* raises problems here as well. In the account, recall, the word's generative function funds "an oppositional way of speaking" (Yancy 2004, 289). Among other products, the speech acts of resistance manifest themselves in a black identity and reality based on a presumption of shared interests among African American selves.[4](http://libproxy.library.unt.edu:2735/journals/journal_of_speculative_philosophy/v018/18.4clarkel.html" \l "FOOT4#FOOT4) At the same time, however, *Nommo*'s creative force is conceptually detached from the word's power to constitute intersubjective relations between selves and others *within* the African American community. Thus, Yancy's concept of *Nommo* only admits a generative power to create identification among blacks who already agree to the presence and terms of shared interest. The power of this *Nommo* fails to reach those African Americans who disagree with black majoritarian terms. This relatively minimal compass of power suggests that *Nommo*'s potential to define black community and reality may need to be reconceptualized beyond the presumptions of shared experience and common values to consider *Nommo*'s potential to forge relations between African Americans who are divided on the terms of their present and future.

## 3-Tier

#### 4 --Perm do both to preserve agency – it’s violent to force debaters to disclose and morally stake their personal identities in a competitive activity.

Brubaker ’17 (Rogers, professor of sociology at the University of California, Los Angeles, and the author of the recent book “Trans: Gender and Race in an Age of Unsettled Identities, <https://www.nytimes.com/2017/05/18/opinion/the-uproar-over-transracialism.html>)

But the Tuvel affair raises issues that go beyond the controversial notion of transracialism. First, it invites reflection on what might be called “epistemological insiderism.” This is the belief that identity qualifies or disqualifies one from writing with legitimacy and authority about a particular topic. Few would argue directly that who we are should govern what we study. But subtler forms of epistemological insiderism are at work in the practice of assessing scholarly arguments with central reference to the identity of the author. Does the often-mentioned fact that Dr. Tuvel is white and cisgender (as am I) disqualify her from raising certain questions? Is her identity relevant to assessing her argument for according more weight to an individual’s racial self-identification and less weight to ancestry? Epistemological insiderism not only stakes out certain domains as belonging to persons with certain identities; it also risks boxing persons with those identities into specific domains. It risks conveying the patronizing and offensive expectation that members of racial and ethnic minorities will focus their scholarship on race and ethnicity**.**

## Uncoop Federalism

## Multilat CP

#### The counterplan is impossible---perm is better.

Anu Bradford 11. Henry L. Moses Professor of Law and International Organization and director of the European Legal Studies Center at Columbia Law School, Senior Scholar at Columbia Business School’s Jerome A. Chazen Institute for Global Business, a nonresident scholar at Carnegie Endowment for International Peace, heads the Comparative Competition Law Project, was an Assistant Professor at the The University of Chicago Law School, practiced EU and antitrust law in Brussels, served as an adviser on economic policy in the Parliament of Finland, and served as an expert assistant at the European Parliament. “International Antitrust Cooperation and the Preference for Nonbinding Regimes”. COOPERATION, COMITY, AND COMPETITION POLICY, ANDREW T. GUZMAN, ED., OXFORD UNIVERSITY PRESS (2011). https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2966&context=faculty\_scholarship

This article has argued that the pursuit of nonbinding international antitrust cooperation represents an optimal choice for states. It is not merely an opportunity to capture limited gains from cooperation while proceeding towards a binding international agreement, as is commonly perceived. States’ conflicting preferences over the optimal content of international antitrust cooperation is the primary impediment for negotiating binding antitrust rules in the WTO. States have sought to accommodate their divergent preferences by removing controversial issues from the negotiation agenda. However, this has led to proposals for watered-down rules that would confer trivial benefits to WTO member states. Because states expect low net benefits from a prospective WTO antitrust agreement, states have abandoned the negotiations to seek case-by-case cooperation and voluntary international guidelines instead. Nonbinding cooperation has successfully fostered international antitrust convergence. A growing number of states enforce increasingly consistent antitrust rules today without any binding international agreement requiring them to do so. Eventually, successful voluntary convergence could pave the way for binding cooperation. However, this article has argued that nonbinding agreements are likely to persist for three primary reasons. First, as cooperation under nonbinding agreements is largely self-enforcing, the added value of a binding agreement with provisions for monitoring, enforcement, and sanctions is trivial. Second, in the absence of coordinated domestic interest group support for international antitrust cooperation, a binding agreement would not provide states with any domestic political economy rents and therefore will remain a low national priority. Finally, the emerging voluntary convergence will slowly eradicate negative externalities stemming from decentralized antitrust regimes, making the case for a binding international agreement less compelling. By arguing that nonbinding agreements are preferable to binding agreements, even in situations where binding agreements are feasible, this article disputes the view that nonbinding agreements are second-best instruments for fostering international antitrust convergence. States have not chosen nonbinding agreements because their first-best regime choice has been unavailable. Instead, states have viewed binding agreements as unnecessary and undesirable. An optimal institutional design must be consistent with state interests to be effective. By acknowledging both the difficulties involved in the pursuit of binding international antitrust cooperation and the ability of nonbinding agreements to mitigate those difficulties, this article raises two critical questions. First, given the obstacles to international antitrust cooperation, how could a binding agreement emerge? And second, assuming that a binding agreement could emerge, what would it add to the existing nonbinding international antitrust regime? Until the proponents of a binding international antitrust agreement can answer those questions, nonbinding cooperation is, and will likely remain, the preferred solution.

#### No link---antitrust laws rarely apply extraterritorially AND when they do its cooperative!

OECD 17. OECD Directorate For Financial And Enterprise Affairs Competition Committee. “Roundtable on the Extraterritorial Reach of Competition Remedies - Note by the United States”. FTC. 4-5 December 2017. https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/et\_remedies\_united\_states.pdf

4. The U.S. Agencies require relief sufficient to eliminate identified anticompetitive harm that has the requisite connection to U.S. commerce and consumers, even if this means reaching assets or conduct in a foreign jurisdiction.7 For example, in the merger context, a company may be required to divest a manufacturing plant outside of the U.S. in order to help preserve competition in the U.S. At the same time, Section 5.1.5 of the International Guidelines sets out a balanced standard for the Agencies’ reliance on extraterritorial remedies that “limits overly broad extraterritorial reach, while recognizing and allowing for effective enforcement.” 8 To this end, the International Guidelines provide that: The Agencies seek remedies that effectively address harm or threatened harm to U.S. commerce and consumers, while attempting to avoid conflicts with remedies contemplated by their foreign counterparts. An Agency will seek a remedy that includes conduct or assets outside the United States only to the extent that including them is needed to effectively redress harm or threatened harm to U.S. commerce and consumers and is consistent with the Agency’s international comity analysis.9 5. This statement sets out a number of important guiding principles. First, the Agencies always look first to resolve anticompetitive concerns through domestic remedies. 6. Second, the Agencies will seek an extraterritorial remedy only when: (1) the extraterritorial remedy is needed to address harm or threatened harm to U.S. commerce and consumers, and (2) such a remedy is consistent with the Agency’s comity analysis. Thus, the Agencies’ general practice is to seek an effective remedy that is restricted to the United States, which the Agencies believe is the best approach. Only when a domestic remedy cannot effectively redress the harm or threatened harm to U.S. commerce or consumers will the Agencies consider broader remedies that have extraterritorial effect. 7. The International Guidelines explain that comity can be a consideration in the Agencies’ remedy determinations. Comity “reflects the broad concept of respect among co-equal sovereign nations and plays a role in determining ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.’”10 The U.S. Supreme Court has held that no conflict exists for purposes of international comity analysis if a person subject to regulation by two nations can comply with the laws of both.11 In addition, even where there is no direct conflict, “the Agencies will assess the articulated interests and policies of a foreign sovereign beyond whether there is a conflict with foreign law.” 12 Comity has not been a significant factor in the Agencies’ remedy determinations involving more than one sovereign because of the high degree of international convergence in competition law and policy. Convergence has reduced the number of direct conflicts, including on remedies. 8. Third, the Agencies seek to avoid conflicts with remedies contemplated by their foreign counterparts, notably through cooperation. The International Guidelines specifically provide that the Agencies “may cooperate with other authorities, to the extent permitted under U.S. law, to facilitate obtaining effective and non-conflicting remedies.”13 Cooperation “can improve substantive analyses and ensure that investigations and remedies are as consistent and predictable as possible, which improves outcomes, and reduces uncertainty and expense to firms doing business across borders.”14 Divergent remedies have the potential to impair firms’ abilities to compete globally and can undermine competition enforcement efforts. In many cases, particularly those involving extraterritorial remedies, cooperation and coordination are important to an effective outcome and improve understanding of each of the cooperating authorities’ needs and proposed decisions. 15 Information exchange among enforcers investigating the same conduct enables the Agencies to understand each other’s decisions in a case and any impact on U.S. commerce. 16 Cooperation has also facilitated informal and practical approaches to limiting duplication, including by one authority’s closing of its investigation without remedies after taking another authority’s remedy into account. 17 9. Consequently, if an extraterritorial remedy is contemplated in a particular case, these principles, as provided in the International Guidelines, allow the Agencies to ensure that the remedy is appropriately tailored to address the identified competitive harm to U.S. commerce and consumers without unnecessarily conflicting with the laws, policies, or remedies of foreign jurisdictions. 10. Specific examples of Agency cooperation on remedies are discussed at Part VI.

## Trade DA

#### There’s no extraterritorial conflict.

Brendan Sweeney 07. BCom, LLB (Melbourne); PhD (Monash); Barrister and Solicitor of the Supreme Court of Victoria; Senior Lecturer, Department of Business Law and Taxation, Faculty of Business and Economics, Monash University. "Combating Foreign Anti-Competitive Conduct: What Role for Extraterritorialism?" [2007] MelbJlIntLaw 2; (2007) 8(1) Melbourne Journal of International Law 35. http://www.austlii.edu.au/au/journals/MelbJIL/2007/2.html#fn1

In the past 15 years, the level of hostility has **reduced considerably** due to a number of factors.[325] First, a growing number of **states now recognise that anti-competitive activities** — most notably hard core cartels, which until recently made up most of the international cases — **are bad for their own economies**.[326] This growing recognition has produced a rush of **new competition regimes**. It has also **fostered a spirit of cooperation**, resulting in a number of collaborative initiatives, including positive comity.[327] Second, a number of states have indicated that they are prepared to **apply their competition laws extraterritorially**; this has tended to **mute complaints by those states against US extraterritorialism.** Third, US antitrust authorities and, more recently but to a lesser degree, US courts, have become more sensitive to the legitimate concerns of other states.[328] The consequence is that competition law extraterritorialism is no longer necessarily just a matter of aggressive unilateralism. **It can, and often does, operate in a cooperative environment; it is no longer just a US phenomenon.**

#### No trade impact.

Joel **Einstein 17**. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

## Kritik

#### 3. Considering alternative futures is key.

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The desire to anticipate what the future holds is not new. The Delphic oracle in the eighth century BC held a prestigious and authoritative position in the Greek world, providing predictions and guidance to both city-states and individuals. In 1555, Nostradamus’ Les Propheties attracted an enthusiastic following, and even today many credit him with predicting many major world events. During the Cold War, techniques designed to anticipate the future were instrumental in informing strategic decisions. Analysts at the RAND Corporation, for example, pioneered the development of foresight methods such as scenario development to predict the Soviet Union’s nuclear strategy during the Cold War in their seminal 1988 report, “How Nuclear War Might Start”. However, just as the Cold War ended, so too did the close relationship between foresight and nuclear weapons. Other sectors utilized and expanded upon futures methods in their work. The most well-known example is the use of scenario planning at Royal Dutch Shell, which has been in use since the 1970s to better prepare for an eventful decade of oil crises and economic turmoil. The objective of Shell-style scenario planning is **breaking** the habit of **assuming that the future will look much like the present.** Today, many parts of the private and public sectors increasingly use strategic foresight to explore the future as part of their decision-making process. In comparison, futures methods are no longer in the mainstream of nuclear policy making, **even though nuclear risks are rising**. This dearth of strategic foresight in nuclear policy making is **dangerous**, but fortunately there are some easy remedies. A fundamental challenge faces nuclear policy makers and scholars today: It is now **more important than ever** to anticipate what the future might hold due to the **uncertainty surrounding tomorrow’s strategic environment.** Moreover, the inherent—and growing—complexity of systems and new actors has made it increasingly difficult to predict the future simply by extrapolating from the past. Futures methods provide the tools to address this challenge, along with a good dose of humility about how much we can control our world. These methods can help **develop foresight**—insight into how and why the future could be different than today—which, in turn, helps to **improve policy, planning, and decision making**, all of which play an integral part in a world with nuclear weapons. We talk about futures in the plural because the objective is not to predict a single future, but to explore alternative futures. By **envisioning alternative futures**, we can **better sense, shape, and adapt** to the one that is emerging. Singapore’s foresight practice is an excellent example of how foresight readies us for change. For over 40 years, foresight has helped the Singapore government go beyond prevailing assumptions, better manage risk and uncertainty, and develop greater resilience to possible shocks. Futures methods also help to **engender ‘knowledge humility’**, where instead of seeking to deny or eliminate uncertainty, we learn to **live with it through reflexive governance.**

#### 4. We don’t ignore structural oppression---preventing existential risk and framing it as a “we” claim is good.

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Visionary pragmatism is driven by a political ethos that accents radical receptivity and a sense that a greater degree of wildness in our efforts is indispensable for transformative democratic movements. While some of my earlier works accented the ethical character of receptive generosity in political life, Visionary Pragmatism argues that receptivity is indispensable for generating democratic power – precisely because receptivity involves vulnerability, relationship formation, capacities to modulate, and learning in unexpected ways amidst difficult differences. Drawing on my engagements with the movement for democratic action research in Northern Arizona, I argue that receptive practices engender remarkable capacities for fostering grassroots critique and alternatives, powerful political assemblages across differences, and transformative dynamics in the face of what otherwise appear to be intractable problems. Our best and most powerful possibilities for co-creating urgent democratic change almost always advance along pathways engendered partly through relationships of careful attentiveness to what we initially took to be oblique, unintelligible – or, perhaps, even odious.

For these reasons, my political, theoretical, and pedagogical engagements move across many different configurations and a wider range of situations, ideologies, modes, and commitments than most. Eschewing a single subject position, in Visionary Pragmatism, I experiment with first-person plurals in which the ‘we’ morphs in relation to the different loci of initiative that animate my reflections. Sometimes ‘we’ refers to proponents of radical and ecological democracy very broadly, sometimes to scholars in higher education, sometimes to political theorists, sometimes to the action research movement that formed among people at Northern Arizona University and its community partners, sometimes to a specific action research team, sometimes to all people facing the possibility of planetary ecological collapse. Among the many things I find compelling about the writing of James Baldwin is how he shifts his pronouns without notice – for example, sometimes using ‘we’ to represent black people, sometimes as an uncanny member of the white-majority United States. This rhetorical shiftiness encroaches upon and pulls his readers – especially white readers – beyond the ‘innocence that constitutes the crime’ of their assumed individual and collective white subjectivities in ways that work in visceral, relational, and conceptual registers (Baldwin, 1992, p. 6). Such uncertainty has significant capacity to erode habits and defences, as one finds oneself unexpectedly drawn into perspectives, locations, energies, and tendencies that unsettle and reorient one’s own subjectivity. Much of my work has theorized ‘moving democracy’, and my rhetorical shifting of the first-person plural is a textual practice that aims to enhance this in ways that facilitate reflection.

Throughout Visionary Pragmatism, I argue that there are powerful reasons for active hope. At the same time, we do not live far from tipping points beyond which planetary ecological collapse, globalizing neoliberal fascism, and violent chaos may overwhelm our efforts. I do not think so much in terms of pessimism or optimism as I do about seizing and co-creating opportunities for catalysing dynamic changes in theory and practice that foster a powerful movement of receptive democracy, for complex democratic commonwealth and ecological flourishing. In one sense, as Walter Benjamin’s discussion of Paul Klee’s ‘Angelus Novus’ makes poignantly clear, it is always ‘too late’ for so much and so many, as catastrophic history keeps piling wreckage at our feet. At the same time, there are what Benjamin (1968) calls ‘weak messianic powers’ that emerge as the retroactive force of salvaged aspects of past struggles ignite sparks with emerging struggles to explode the continuum of progress. In this sense, up to our day, it is never altogether too late. With the language of ‘game-transformative practice’, I argue that a visionary-pragmatic movement of radical democracy must do something analogous in response to the fierce urgency of now, to avoid a sixth extinction in which this possibility could well become a casualty.

#### Refuse ontology frames---Black isn’t coterminous with Slave but is an agent of a shared history of humanity---ceding democratic ideals to slaves is inaccurate, racially paternalistic, and zeroes pragmatic harms reduction

McCarthy 20 (Jesse McCarthy is an assistant professor in the departments of English and of African and African American Studies at Harvard University. “On Afropessimism.” <https://lareviewofbooks.org/article/on-afropessimism/> //shree)

Nonetheless, the fact that the main current of Afropessimist thinking runs counter to all of Black political history and tradition thus far; the fact that the foundational thinker for this perspective, Frantz Fanon, came to completely opposing conclusions with respect to the nature of politics and solidarity in struggle; the fact that the theory often appears to evade scrutiny or contestation by proclaiming itself “meta-theoretical” and “ontological”; the fact that it asserts a “mandate” for which no empirical evidence is provided and in the face of overwhelming evidence that it constitutes at best a minoritarian and class-specific position — all of this has to be reckoned with by those who want to take Afropessimism to heart.

Perhaps it’s worth reminding ourselves that when he was murdered, Fred Hampton was encouraging poor whites to analogize their position to that of poor Blacks. At the time of his assassination, Malcolm X was embracing and actively seeking to incorporate a cross-racial coalition into his new organization. Ella Baker actively encouraged the deepening of organizational ties and activist links across different communities by emphasizing common struggle and common oppression. What evidence do we have, on the other hand, that the power behind the status quo is quaking at the thought of Black folk gathering in isolation to mourn the end of the world?

If the challenge is more narrowly intellectual and what is needed are correctives to white Marxist hubris, Cedric Robinson’s Black Marxism (1983) already exists. Black feminist thought offers its own counternarratives. Of course, Wilderson doesn’t have to agree with Robinson or the Combahee River Collective. But isn’t it a problem that they aren’t cited even once in his books? Are we to jettison our entire tradition? Were all those who came before us so hopelessly naïve? Are we going to cast aside Vincent Harding’s There Is a River and read nothing but Fanon, Lacan, and Heidegger? Is Bantu philosophy overdetermined by social death even if its worldview was constructed in the absence of the white gaze? Afropessimism has yet to tackle these questions, to take its opponent’s counterarguments and positions seriously.

David Marriott, who is cited by Wilderson as a fellow Afropessimist, asks in his own work: whither Fanon? I wonder this, too. Wilderson says he is the figure he modeled himself on as a young man. Clearly Fanon is central to all of his thinking; indeed, all Afropessimist theorists consider Black Skin, White Masks (1952) a cornerstone text. It is an extraordinary philosophical work, and they are right that it is too often underappreciated. But it is also an extremely complicated intellectual experiment. The third sentence of that book is: “I’m not the bearer of absolute truths.” Fanon proposes to work through the problem of the abjection of Blackness, and that process extends beyond the book into the engaged existentialist revolt and the analysis of colonial relations that he explicitly argues involves the colonized subject, regardless of their race, in The Wretched of the Earth (1961). But even if one were to read only Black Skin, White Masks, it is impossible to miss the humanist assumptions that it opens onto in its conclusion. What else can one make of Fanon stating that “I am not a slave to slavery that dehumanized my ancestors,” and that “the density of History determines none of my acts. I am my own foundation”? How can one miss the assumption of a shareable humanity when he insists that “at the end of this book we would like the reader to feel with us the open dimension of every consciousness.” How can Fanon’s trajectory into the Algerian War of Independence be reconciled with the null trajectories that Afropessimism proposes?

If Afropessimism pushes us to pose harder and sharper questions as Fanon prayed his Black body always would, if it serves to break the shallow cant of the media class and its operatives — then certainly it will have done some good. But on the terms of its own presiding genius it needs to be understood as a waystation and not a terminus on the road to disalienation that Fanon argued is the only path to freedom for Black people in the modern world. That path, which he described in terms of building a “new man,” required him to first understand the depth of abjection that Blackness had been cast into, and then to undo that abjection by mobilizing its ejection from the political order of the West in a grand historical struggle to reconstruct that civilization from the side of the oppressed, an embrace that clearly involves a radical solidarity with non-Black people. This was the mission Fanon was on when he died, and it was a mission he believed Black peoples would have a special, indeed, foundational role in ultimately seeing through.

Realizing these goals does not mean adhering to a formulaic principle or that Black people need to think, act, or speak as a monolith. Fanon and Wilderson are both fond of citing Aimé Césaire’s phrase about “the end of the world” from his poem Notebook of a Return to the Native Land:

One must begin somewhere.

Begin what?

The only thing in the world worth beginning:

The End of the world of course.

These lines do not appear at the end of the poem, however, but roughly halfway through it. The interjection, “of course,” stands in here for the French word “parbleu,” which, even in the late 1930s when Césaire was composing his poem in Paris, carried a folksy and bathetic ring that is only dimly captured in the English but is easier to hear if you imagine these lines as having strayed from a play by Samuel Beckett. Wilderson intones this phrase repeatedly in his book, wielding it like a totemic hammer portending world-destroying events that, in light of the commitments of his own theory, seem to suggest, and possibly wish for, a zero-sum war between the races. But Césaire’s usage is far more ambivalent and ironic, the cry of a man whose revolutionary action must first and foremost be directed inwardly toward a poetic reconstruction of the self, a liberation that requires a self-determined and self-realizing pursuit of truth.

Fanon admired and respected no other intellectual more than Césaire. We know from his letters to his French publisher François Maspero that he imagined his writings as adressed, in no small part, to and for him. The idiosyncratic prose style of Black Skin, White Masks is Fanon’s way of signifying upon a correspondence with Césaire’s poetics. Both writers are acutely aware that the Black thinker is poised precariously between the poles of reflection and action. But both are committed to a humanistic pursuit of truth and both believe in the promise of a radiant Blackness whose time is not yet come. This is why, even as the Algerian War raged around him, Fanon continued his psychiatric research, convinced that understanding the traumas of war and torture would be necessary for healing the postrevolutionary body politic. He wrote for the present and for the future in pursuit of an understanding of himself and of human nature, and for the cause of a political independence and freedom that he hoped would set the entire African continent on a new course. Had he lived, he would have persevered until every colonialist regime from Algiers to Cape Town (the title he had in mind for his last book was Alger-Le Cap) had been driven off the continent. Fanon was no pessimist: true revolutionaries never are.

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But must we revolve around Fanon in the first place? Today many activists are more inspired by Fannie Lou Hamer. The US context has its own problems that Fanon only barely understood and addressed. Why not return instead, in this hour of national contestation, to a figure like David Walker and his Appeal to the Coloured Citizens of the World; But in Particular and Very Expressly to those of the United States of America from 1829? We still underappreciate the importance of this text, one of the seminal documents that captures the first great Black intellectual debate in the United States, which was an argument over whether or not we ought to stay in the country at all. Walker believed we should, and he was the first to define and defend the monumental implications of that choice. He attacked the mighty lobby of the American Colonization Society, which included the powerful senator Henry Clay, Abraham Lincoln, and many leading Black intellectuals of the day, who were convinced full equality for Blacks in America was neither possible nor desirable and advocated emigration. Their plans revolved around evacuating the Black population to the Pepper Coast, now the country of Liberia, which emerged from colonial schemes like “Mississippi-in-Africa” that the American Colonization Society founded in the 1830s.

We could have abandoned the country. History could have taken a very different course. American slaves could have returned to Africa and the United States could have become a white ethno-state, a second Europe. The 1820s and ’30s were the last possible moment of undoing or preventing the existence of a Black America. But Black American intellectuals made the choice to stay — to hold this ground and make something new here that the world had never seen. As the political scientist Melvin Rogers points out, Walker’s Appeal not only staked this argument in terms of a principled Black nationalist claim based on the enormous sacrifice of “blood and tears” in slavery; the rhetorical address of the text was also intended to awaken Black Americans to their own potential as a nationally self-consciously political community with a global outlook. “[F]or [Walker],” Rogers writes, “African Americans did not need a prophet to whom they should blindly defer. Rather they needed a community willing to confront practices of domination, capable of responding to their grievances, and susceptible to transcending America’s narrow ethical and political horizon.”

Wilderson’s Afropessimism insists that we are still slaves. Walker insisted in 1829 that the slaves are (and were even then) “colored citizens” of the United States and of the world. That if we are oppressed it is only because we are ignorant of our true strength, because we have been taught to disbelieve and disavow our worth to the world, to the nation, and to each other. Which of these two views is the correct one? I think the historical record and the present state of our politics tells us all we need to know on that score. For it is no coincidence that today it is Black Americans who are once again trying to save the country, to invest in finishing the work of making this place a home that we can live in. In what is a long-standing pattern, the “coloured citizens” of this country are at the forefront of practicing civics. Indeed, what could be more republican than risking one’s health to restore the health of the body politic? To ensure that one of the most basic promises of the state is properly fulfilled: that it apply its law enforcement equally, humanely, and in a manner accountable to the people it serves.

As in past struggles, our principled defense of an ethical civil code has attracted others with its moral force. We have seen a massive response, including from sources traditionally opposed to these concerns, who recognize the profoundly dysfunctional culture of US policing, prisons, and courts. Even many of those who do not agree that these are the result of actively racist policies and attitudes no longer deny that our exceptionally poor record cannot plausibly be unrelated to a long history of antiblack violence and antagonism. For this same reason, likeminded people around the world are hoping for a decisive break with the past‚ taking to the streets across the globe to demand that state actors acknowledge that there really is a history of injury that needs to stop being denied, and that we can and should work together to design a new social contract that will restore the perceived legitimacy of law enforcement and criminal justice in the eyes of all citizens and not just some.

The generation undertaking these endeavors does not seem to require a narrative of optimism in order to take the great risks they have incurred. They have a healthy indifference to both optimism and pessimism alike. Perhaps it results from the demands of carrying out politics in the real world. The incredibly difficult task of organizing and strategizing in order to elevate and amplify the best responses and to rein in and temper the counterproductive ones that delay and diminish a good cause. That’s hard to do in the best of cases: in a turbulent, paranoid, and instantly videotaped public sphere, it’s a Sisyphean task that bad-faith commentators take advantage of.

None of this diminishes the fundamental need for greater self-capacity of the kind Walker called for 200 years ago. Much of the work ahead will necessarily involve a growing capacity for self-reflection, self-criticism, irony, and joy in our politics. It will require acknowledging that struggles against white oppression will never be successful without deepened self-healing in our communities: repairing the relations in families, between men and women; ending the violence directed at trans, queer, and otherwise non-conforming people in our neighborhoods; ending the heinous blood feuds between rival gangs and sets; restoring education and communal trust as our highest priorities and most cherished aspirations. These will always remain preconditional to the realization of freedom and autonomy. It is pursuing these aims as an ongoing collective activity that will make unavoidable the realization as Walker said, that this country is “more ours” than anyone else’s — that we are a historic people with a world-historical destiny that understands our suffering as endowing us with both the right and the responsibility of civilizing the United States in such a way that it reflects the values that our historical experiences bring to it, the freedoms, equalities, and cultural pluralisms that we have made vital and central to its identity.

One doesn’t need to hang on desperately to a mirage of hope. If we look to history, we can see more than enough concrete evidence and example to support the conclusion that a racially defined caste system is unlikely to ever again prevail. Of course, that doesn’t mean history is a smoothly upward-trending curve. We have known terrible setbacks. Yes, the violent defeat of Reconstruction was successful. But the building of Black institutions and the Niagara Movement proceeded anyway. Tulsa was burned to the ground. But its Black citizens turned right around and rebuilt it out of the ashes. The Civil Rights movement was checked by the forces of reaction and the assassin’s bullet; but the world of unquestioned white superiority and authority that George Wallace hoped to preserve is reduced now to a twinkle in David Duke’s blue eye. Yes, creepy white supremacists still crawl out from under mossy stones at opportune moments to wail about their Nordic fantasies in their over-sized khaki pants. Yes, like the militants of the Islamic State, they are capable of carrying out horrific acts of terror and violence. But like that barbaric and fanatical sect, white supremacy is permanently confined to such rear-guard actions because it has already lost — it is trying to reverse a clock going forward — which explains the virulence and incoherence of its outbursts of spastic violence.

We are not at the end, but near the beginning of something new. The pandemic and the multiple underlying crises and fractures it has revealed make vivid that one need not wait so very long for “the end of the world.” The problem, as generations of millenarians have discovered, is that it turns out there’s a morning after the end of the world. And one after that too. The hardest truth is that all the uncertainties that govern the question of what can be done, what will be done, and the difference between the two, remain in our hands. What would Frantz Fanon, or David Walker, or Ella Baker tell us if they saw the streets today? Surely, not that we are at an impasse against an implacable enemy. They would insist that we lift each other and rise together with the spirit of history at our backs. We have done it before. Every time we do it’s a new day.

#### 4---Social life can be followed with greater progress---the alternative cedes victory to the oppressors

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Professor Gordon, I recently read your excellent article in Contemporary Political Theory responding to Afropessimism - part of your argument focuses on the lived experience of blackness where you argue persuasively that "Blacks among each other live in a world of selves and others." I recently read an article by Jared Sexton ("Ante-Anti-Blackness: Afterthoughts," http://csalateral.org/issue1/content/sexton.html) where he argues that there is the possibility of social life within social death. This strikes me as an odd, yet intriguing, argument given the absolute ontological claims that scholars such as Sexton and Wilderson make. How would you respond to the argument that Sexton makes in the above article? Thank you for your time, Alex Dear Alex Gazmararian, Thanks for your kind note. My immediate thought is that the contradictions of such an argument raises the question of their position unraveling. As long as there is social life, the thing to do is build on that. White [Why] prioritize the perspective of deluded oppressors? Why make their point of view the standard on lives the rest of us must live? I must catch a plane right now, so I apologize for so short a reply. Simply bear in mind that if oppressed people don't learn to value each other, which involves also value being valued by each other, the result is victory to oppressors and oppression. Irie tov, Lewis

#### 5---Annotation of the 1AC fails. Black annotation and redaction doesn’t build an alternative kind of care.

Bickerstaff 17 – Jovonne Bickerstaff, Post-Doctoral Associate, “Of Wake Work and We Who Would Build: Centralizing Blackness in Digital Work”, February, http://aadhum.umd.edu/2017/02/centralizing-blackness-digital-work/

Wake work at the intersection of Black Studies and the Digital Humanities —Justin Hosbey, Ph.D. “In the anti-black ‘post-racial’ social reality animated and subtended by a black US president, non-humans weaponize sidewalks; shoot ourselves while handcuffed in the back of police cars; are brutally murdered while asking for help; incarcerated, assaulted, and stopped and frisked for walking, driving, and breathing while black. What will be the work of black studies now to defend those who are subject to such overwhelming and gratuitous, narrative and actual, discursive and material death?” —Christina Sharpe, Black Studies: In the Wake (2014) Here we stand, weeks removed from the inauguration of the 45th president of the United States. The malignant revanchism of White civil society has forcibly dislocated many of us from a cognitive dissonance induced by 8 years of a charismatic Black man being the face of American Empire. To be clear, the age of neoliberal capitalism has always been a politically and economically harrowing zone of existence for Black life. But it seems to me that after this election, our flights of fancy for incorporation into the American settler project can no longer reasonably cohere. Now we must ask—where do we go from here? As scholars and intellectuals committed to critical Black study and Black studies, where do our responsibilities and accountabilities lie? How can our work, digital and/or otherwise, upend the gratuitous violence that structures Black existence while undo-ing what Sylvia Wynter terms the “narratively condemned status” of Black life? In her essay, “Making a Case for the Black digital humanities,” Kim Gallon cites the work of Alexander Weheliye (2015) to put digital humanists on notice that the “human,” as defined by the West, is a distinctly racial project that demarcates humanity into categories of “full human,” “not-quite-human,” and “non human.” This demarcation of humanity is made coherent by the violent negation of the unassimilable, non-human, “Black.” Sylvia Wynter argues that this “human,” what she terms ‘Man,’ is a bourgeois, Western conception of the human that (as a result of colonialism and imperialism) “over-represents itself as if it were the human itself” (Wynter 2003: 260). The “humanities” are key intellectual engines of this overrepresentation: the liberal humanist subject—‘Man’—has animated centuries of hermeneutic inquiry in countless academic fields, from philosophy to history to anthropology. Through the uncritical use of digital modes of inquiry and representation, the digital humanities stand to further embolden the hegemony of ‘Man.’ As someone working at the intersection of Black Studies and the digital humanities, this is the central problem that circulates in my thinking and guides my research. If the digital humanities writ-large fail to reckon with the anti-Blackness at the core of liberal humanism, then a “Black Digital Humanities” should be prepared to deconstruct ‘Man’ and radically reconfigure what it means to be human. If digital humanists’ remedy for Black absence in many DH spaces is merely increased representation, instead of a conscious and critical reappraisal of the “Humanities” themselves, digital humanists risk replicating the ideological and cognitive frameworks that distort and undermine Black ways of knowing and being in the world. Gallon argues that a “Black Digital Humanities” could engage in the “technology of recovery,” which would interrogate the ways that the digital can reinforce the racialized configurations of humanity in the West. This recovery work would also be “characterized by efforts to bring forth the full humanity of marginalized peoples through the use of digital platforms and tools.” This is important work, particularly in a political climate where Senators Mike Lee (R-Utah) and Marco Rubio (R-Florida) have introduced Bill 103, which declares that “No Federal funds may be used to design, build, maintain, utilize, or provide access to a Federal database of geospatial information on community racial disparities or disparities in access to affordable housing.” This makes the stakes of Black digital humanities work even higher, particularly for scholars interested in geospatial analyses of race, space, and housing. The introduction of this bill reinforces the narrative of a “postracial” America – a place where pointing out racial disparities is tantamount to racial oppression itself. If this bill becomes law, we may no longer have access to even the state’s “official” renderings of race, space and place. Since before the time of W. E. B. Du Bois’ “The Philadelphia Negro,” maps and other geospatial renderings have been key in understanding the modalities and race and class inequality in Black communities. This bill is an assault on key databases used by activists, scholars, and communities in the struggle against regimes of urbicide and racial capitalism in the United States. This makes Gallon’s “technology of recovery” even more resonant, because Black historical and literary archives may soon be the only databases from which we can understand how that the past haunts our present, and propel ourselves towards a Black future. In my own research, I am drawn to Christina Sharpe’s conception of “wake work.” **Wake work** does not seek to amend Black suffering through the frames of juridical, philosophical, or historical solutions. Wake work theorizes Black life in both the “wake” and the “hold” of the slave ship, requiring recognition “of the ways that we are constituted through and by vulnerability to overwhelming force, though not only known to ourselves and to each other by that force.” This is critical Black study that does not seek to make room for the full scope of Black humanity to be recognized by the white consciousness. Rather, it works to “defend the dead” through the cultivation of a ‘blackened consciousness’ that would inhabit the ways that we are both living and dying in the wake. In my own digital humanities work centered in New Orleans, 11 years after the storm, this means staring unflinchingly at the political, economic, and intellectual assemblages that over-determine Black life/death, while simultaneously understanding how insurgent Black social life can undermine these over-determinations. Is digital wake work possible? If so, what can it look like? That is the question that I intend to work through as a researcher within the AADHum Initiative. If it is indeed true that, as Moya Z. Bailey says, “All the Digital Humanists Are White, All the Nerds Are Men, but Some of Us Are Brave,” then it’s time to say—in the words of Jonathan P. Jackson—“Gentlemen, we will be taking over from here.” In our work, how can we discover and further develop digital lines of escape, made possible by the apertures that emerge at the collision of Black Studies and the digital humanities? We who would build: Re-visioning resistance & theorizing beyond the gaze —Jovonne Bickerstaff, Ph.D. We have two hands: one is to battle, one is to build. We battle. We resist by calling out threats to our dignity by name. We build. We actively protect our dignity by creating what works. Those two hands may be on one person, one organization may be set up to do both. For others, they are the battling or the building kind. Either way, the battlers need the builders. The builders need the battlers. This is a discipline of resistance. —Brittany Packnett, activist Outlining her concept of “Black studies in the wake,” Christina Sharpe emphasizes its call “to be at the intellectual work of a continued reckoning the longue of Atlantic chattel slavery, with black fungibility, antiblackness… accounting for the narrative, historical, structural, and other positions black people are forced to occupy.” Drawing on Alexander Weheliye, Kim Gallon, by contrast, characterizes Black Studies as “a mode of knowledge production” that “investigates processes of racialization with a particular emphasis on the shifting configurations of black life.” Building on the Duboisian tradition of intellectual activism that advances scholarship while furthering social justice, both suggest that the real and vital work on black people necessarily speaks to race—that is, analyzing the consequences of and resistance to the project of racialization. I can see how interrogating the racial project of whiteness that shapes black folks’ lives can be a way of speaking truth to power for African Americanist scholars. Still, focusing **so acutely** on unpacking racism and racialization as sole or primary path of resistance **gives me pause**. I wonder if we’ve framed what Black Studies does—and more importantly can do—**too narrowly**. Might our pre-occupation with black struggle, whether in the conditions of or resistance to oppression, **make us complicit in the diminishing the fullness of black humanity** and what we might explore in it? Can we imagine examining black experience without making America’s racialization project the dominant idiom? Recently, activist Brittany Packnett developed a Twitter thread which began, “We have two hands: one is to battle, one is to build.” Certainly, we African Americanists know how to battle. So much of our training as scholars prepares us for it; we’re socialized to privilege the work of critique and deconstruction. Given how black folk have been conceptualized or written out of cannons, our proclivity towards confrontational debate may be more pronounced. We feel the pulse of that resistance when Gallon characterizes Black Studies as “the comparative study of the black cultural and social experiences under white Eurocentric systems of power.” **But… is that enough?** Is our conception of black scholarly resistance **too narrow?** Taking Packnett’s call for a multifaceted strategy of resistance to heart, I must ask, when do we build? These questions are central to who I’ve become as a scholar. Surely, I do my share of confrontational resistance, interrogating problematic paradigms, particularly when I teach. Still, as my research agenda solidifies, I’m more compelled by that call to **build**. Centering black experience has been my entry point for moving beyond critique to imagine new narratives and inquiry to engage in what I term theorizing beyond gaze—orienting my own work and my hopes for the AADHum Initiative. “From my perspective there are only black people. When I say “people”, that’s what I mean… No African American writer had ever done what I did… even the ones I admired… I have had reviews in the past that have accused me of not writing about white people… As though our lives have no meaning and no depth without the white gaze. And I have spent my entire writing life trying to make sure that the white gaze was not the dominant one … I didn’t have to be consumed by or concerned by the white gaze… The problem of being free to write the way you wish to without this other racialized gaze is a serious one for an African American writer” [emphasis added]. —Toni Morrison Freedom for her, Nina Simone once quipped, was the absence of fear. As a scholar and writer, my vision of freedom is more akin to Toni Morrison’s and begins with one radical tool: choice. I name, frame, and lay claim to different terrains: examining understudied populations (couples in enduring relationships), raising novel questions (how emotional strategies for resilience impact intimacy), and situating my research in unorthodox literatures (sociology of emotions vs. “the black family”). In every case, each she/he/they that I describe is, by default, black. Refusing to explicitly qualify race in work on black people can be jarring because having non-white experiences centered is so rare. In addition to disturbing notions of black folks as the perpetual other, theorizing beyond the gaze forces us to recognize how failing to fully account for positionality undermines our theorizing. If we uphold confrontation as the primary or most effective tool of resistance, I fear we risk **neglecting** how resistance requires and has always relied as much on subversive tactics like **theorizing beyond the gaze as on direct action**. In the AADHUM initiative, I hope that helps us think through how can we begin to construct a “meaningful intellectual and activist challenge that circumvents the analyses of injustice that re-isolate the dispossessed, à la McKittrick’s invocation of Gilmore. It’d be easy (and reductive) to see black Twitter simply as an offshoot of mainstream Twitter use. But what if we saw it instead as innovation narrative, à la Steve Jobs and iPods and iPhones, whereby they’re responsible for optimizing technology use in ways that reveal its fullest potential? Or conversely, could we invert the arrows of co-optation, which typically focuses on stolen African American products, to reveal how communities of color used Twitter and Vine towards subversive ends of mobilizing social change (i.e. BLM), celebrating black joy in the mannequin challenge or viral memes on Vine? Ultimately, how, when and why we enter as African Americanists, seems to turn largely on who we are working for and what we are working towards. The aim is not to abandon the battle, but simply to recognize that, while necessary, it is **insufficient**.

#### Unconscious racial bias exists but psychoanalytic explanations ignore specific social and cultural value systems and confuse habit with instinct.

Peter Hudis 15, Professor of English and History @ Queens College, 2015, “Frantz Fanon: Philosopher of the Barricades,” Pg. 35-37

Fanon’s vantage point upon the world is his situated experience. He is trying to understand the inner psychic life of racism, not provide an account of the structure of human existence as a whole. Racism is not, of course, an integral part of the human psyche; it is a Social construct that has a psychic impact. Any effort to comprehend social distress that accompanies racism by reference to some a priori structure- be it the Oedipal Complex or the Collective Unconscious- is doomed to failure.

Carl Jung sought to deepen and go beyond Freud's approach by arguing that the subconscious is grounded in a universal layer of the psyche- which he called "the collective unconscious:' This refers to inherited patterns of thought that exist in all human minds, regardless of specific culture or upbringing, and which manifest themselves in dreams, fairy tales, and myths. Jung referred to these universal patterns as "archetypes:' It may seem, on a superficial reading, that 1 Fanon is drawing from Jung, since he discusses how white people tend to unconsciously assimilate views of blacks that are based on negative stereotypes. Even the most "progressive" white tends to think of blacks a certain way (such as "emotional;' "physical," or / "aggressive"), even as they disavow any racist animus on their part. However, Fanon denies that such collective delusions are part of a psychic structure; they are not permanent features of the mind. They are habits acquired from a series of social and cultural impositions. While they constitute a kind a collective unconscious on the part of many white people, they are not grounded in any universal "archetype." The unconscious prejudices of whites do not derive from genes or nature, nor do they derive from some form independent of culture or upbringing. Fanon contends that Jung "confuses habit with instinct."

Fanon objects to Jung's "collective unconscious" for the same reason that he rejects the notion of a black ontology. His phenomenological approach brackets out ontological claims on both a social and psychological level insofar as the examination of race and racism is concerned. He writes, "Neither Freud nor Adler nor even the cosmic Jung took the black man into consideration in the course of his research.”

This does not mean that Fanon rejects their contributions tout court. He does not deny the existence of the unconscious. He only denies that the inferiority complex of blacks operates on an unconscious level. He does not reject the Oedipal Complex. He only denies that it explains (especially in the West Indies) the proclivity of the black "slave" to mimic the values of the white "master." And as seen from his positive remarks on Lacan's theory of the mirror stage, he does not reject the idea of psychic structure. He only denies that it can substitute for an historical understanding of the origin of neuroses .23 Fanon adopts a socio-genetic approach to a study of the psyche because that is what is adequate for the object of his analysis.

For Fanon, it is the relationship between the socio-economic and psychological that is of critical import. He makes it clear, insofar as the subject matter of his study is concerned, that the socio-economic is first of all responsible for affective disorders: "First, economic. Then, internalization or rather epidermalization of this inferiority."24 Fanon never misses an opportunity to remind us that racism owes its origin to specific economic relations of domination- such as slavery, colonialism, and the effort to coopt sections of the working class into serving the needs of capital. It is hard to mistake the Marxist influence here. It does not follow, however, that what comes first in the order of time has conceptual or strategic priority. The inferiority complex is originally born from economic subjugation, but it takes on a life of its own and expresses itself in terms that surpass the economic. Both sides of the problem-the socio-economic and psychological-must be combatted in tandem: "The black man must wage the struggle on two levels; whereas historically these levels are mutually dependent, any unilateral liberation is flawed, and the worst mistake would be to believe their mutual dependence automatic:''5

On these grounds he argues that the problem of racism cannot be solved on a psychological level. It is not an "individual" problem; it is a social one. But neither can it be solved on a social level that ores the psychological. It is small wonder that although his name never appears in the book, Fanon was enamored of the work of Wilhelm Reich. This important Freudian-Marxist would no doubt feel affinity with Fanon's comment, "Genuine disalienation will have been achieved only when things, in the most materialist sense, have resumed their rightful place:'27

#### Neurological, racial bias is flexible and determined by coalitional habit forming in the brain---orienting groups around institutional change best breaks down bias. This is offense because their theory rejects these solutions.

Mina Cikara and Jay Van Bavel 15. \*Mina Cikara is an Assistant Professor of Psychology and Director of the Intergroup Neuroscience Lab at Harvard University. Her research examines the conditions under which groups and individuals are denied social value, agency, and empathy. \*Jay Van Bavel is an Assistant Professor of Psychology and Director of the Social Perception and Evaluation Laboratory at New York University. “The Flexibility of Racial Bias” Scientific American. 6-2-15. <https://www.scientificamerican.com/article/the-flexibility-of-racial-bias/>

The city of Baltimore was rocked by protests and riots over the death of Freddie Gray, a 25-year-old African American man who died in police custody. Tragically, Gray’s death was only one of a recent in a series of racially-charged, often violent, incidents. On April 4th, Walter Scott was fatally shot by a police officer after fleeing from a routine traffic stop. On March 8th, Sigma Alpha Epsilon fraternity members were caught on camera gleefully chanting, “There Will Never Be A N\*\*\*\*\* In SAE.” On March 1st, a homeless Black man was shot in broad daylight by a Los Angeles police officer. And these are not isolated incidents, of course. **Institutional and systemic racism reinforce discrimination in countless situations, including hiring, sentencing, housing, and even mortgage lending**. It would be easy **to see in all this powerful evidence that racism is a permanent fixture in America’s social fabric and** even, perhaps, **an** inevitable aspect of human nature. Indeed, the mere act of labeling others according to their age, gender, or race is a reflexive habit of the human mind. Social categories, like race, impact our thinking quickly, often outside of our awareness. **Extensive research has found that these implicit racial biases—negative thoughts and feelings about people from other races—are automatic, pervasive, and difficult to suppress**. Neuroscientists have also explored racial prejudice by exposing people to images of faces while scanning their brains in fMRI machines. **Early studies found that when people viewed faces of another race, the amount of activity in the amygdala—a small brain structure associated with experiencing emotions, including fear—was associated with individual differences on implicit measures of racial bias**. This work has led many to conclude that racial biases might be part of a primitive—and possibly hard-wired—neural fear response to racial out-groups. **There is little question that** categories such as **race**, gender, and age **play a major role in shaping the biases and stereotypes that people bring to bear in their judgments of others**. However, **research has shown that how people categorize** themselves **may be just as fundamental to understanding prejudice as how they categorize others**. When people categorize themselves as part of a group, their self-concept shifts from the individual (“I”) to the collective level (“us”). People form groups rapidly and favor members of their own group even when groups are formed on arbitrary grounds, such as the simple flip of a coin. These **findings highlight the remarkable ease with which humans form coalitions**. Recent research confirms **that** coalition**-based** preferences trump race**-based** preferences. For example, **both Democrats and Republicans favor the resumes of those affiliated with their political** party **much** more than **they favor those who share** their race. These **coalition-based preferences remain powerful even in the absence of the animosity present in electoral politics**. Our **research has shown that the simple act of placing people on a** mixed-race team **can** diminish **their** automatic racial bias. In a series of experiments, **White participants who were randomly placed on a mixed-race team—the Tigers or Lions—showed little evidence of implicit racial bias**. **Merely belonging to a mixed-race team trigged positive automatic associations with all of the members of their own group, irrespective of race**. **Being a part of one of these seemingly trivial mixed-race groups produced similar effects on brain activity—the** amygdala responded **to** team **membership** rather than race. Taken together, **these studies indicate that momentary changes in group membership can override the influence of race on the way we see, think about, and feel toward people who are different from ourselves**. Although these coalition-based distinctions might be the most basic building block of bias, they say little about the other factors that cause group conflict. Why do some groups get ignored while others get attacked? Whenever we encounter a new person or group we are motivated to answer two questions as quickly as possible: “is this person a friend or foe?” and “are they capable of enacting their intentions toward me?” In other words, once we have determined that someone is a member of an out-group, we need to determine what kind? The nature of the relations between groups—are we cooperative, competitive, or neither?—and their relative status—do you have access to resources?—largely determine the course of intergroup interactions. Groups that are seen as competitive with one’s interests, and capable of enacting their nasty intentions, are much more likely to be targets of hostility than more benevolent (e.g., elderly) or powerless (e.g., homeless) groups. This is one reason why sports rivalries have such psychological potency. For instance, fans of the Boston Red Sox are more likely to feel pleasure, and exhibit reward-related neural responses, at the misfortunes of the archrival New York Yankees than other baseball teams (and vice versa)—especially in the midst of a tight playoff race. (How much fans take pleasure in the misfortunes of their rivals is also linked to how likely they would be to harm fans from the other team.) **Just as a particular person’s group membership can be flexible, so too are the relations between groups. Groups that have previously had cordial relations may become rivals (and vice versa)**. Indeed, psychological and biological responses **to out-group members** can change, depending on whether or not that out-group is perceived as threatening. For example, people exhibit greater pleasure—they smile—in response to the misfortunes of stereotypically competitive groups (e.g., investment bankers); however, this malicious pleasure is reduced when you provide participants with counter-stereotypic information (e.g., “investment bankers are working with small companies to help them weather the economic downturn). Competition between “us” and “them” can even distort our judgments of distance, making threatening out-groups seem much closer than they really are. These distorted perceptions can serve to amplify intergroup discrimination: the more different and distant “they” are, the easier it is to disrespect and harm them. Thus, not **all out-groups are treated the same: some elicit indifference whereas others become targets of antipathy. Stereotypically threatening groups are especially likely to be targeted with violence, but those** stereotypes can be tempered **with** other info**rmation.** **If perceptions of intergroup relations can be changed, individuals may overcome hostility toward perceived foes and become more responsive to one another’s grievances.** **The** flexible nature **of both group membership and intergroup relations offers reason to be** cautiously optimistic **about the potential for greater cooperation among groups in conflict** (be they black versus white or citizens versus police). One strategy is to bring multiple groups together around a common goal. For example, during the fiercely contested 2008 Democratic presidential primary process, Hillary Clinton and Barack Obama supporters gave more money to strangers who supported the same primary candidate (compared to the rival candidate). Two months later, after the Democratic National Convention, the supporters of both candidates coalesced around the party nominee—Barack Obama—and this bias disappeared. In fact, merely **creating a sense of** cohesion **between two competitive groups can increase empathy for the suffering of our rivals**. **These** sorts of **strategies** can help **reduce aggression toward hostile out-groups, which is** critical for creating more opportunities for constructive dialogue addressing greater social injustices. Of course, instilling a sense of common identity and cooperation is extremely difficult in entrenched intergroup conflicts, but when it happens, the benefits are obvious. Consider how the community leaders in New York City and Ferguson responded differently to protests against police brutality—in NYC political leaders expressed grief and concern over police brutality and moved quickly to make policy changes in policing, whereas the leaders and police in Ferguson responded with high-tech military vehicles and riot gear. In the first case, multiple groups came together with a common goal—to increase the safety of everyone in the community; in the latter case, the actions of the police likely reinforced the “us” and “them” distinctions. Tragically, these types of conflicts continue to roil the country. Understanding the psychology and neuroscience of social identity and intergroup relations cannot undo the effects of systemic racism and discriminatory practices; however, it can offer insights into the psychological processes responsible for escalating the tension between, for example, civilians and police officers. **Even in cases where it isn’t possible to create a common identity among groups in conflict, it may be possible to blur the boundaries between groups**. In one recent experiment, we sorted participants into groups—red versus blue team—competing for a cash prize. Half of the participants were randomly assigned to see a picture of a segregated social network of all the players, in which red dots clustered together, blue dots clustered together, and the two clusters were separated by white space. The other half of the participants saw an integrated social network in which the red and blue dots were mixed together in one large cluster. Participants who thought the two teams were interconnected with one another reported greater empathy for the out-group players compared to those who had seen the segregated network. Thus, reminding people that individuals could be connected to one another despite being from different groups may be another way to build trust and understanding among them. A mere month before Freddie Gray died in police custody, President Obama addressed the nation on the 50th anniversary of Bloody Sunday in Selma: “We do a disservice to the cause of justice by intimating that bias and discrimination are immutable, or that racial division is inherent to America. To deny…progress – our progress – would be to rob us of our own agency; our responsibility to do what we can to make America better." The president was saying that **we**, as a society, **have a responsibility to reduce prejudice and discrimination**. These recent findings from psychology and neuroscience indicate that we, as individuals, possess this capacity. Of course this capacity is not sufficient to usher in racial equality or peace. Even when the level of prejudice against particular out-groups decreases, it does not imply that the level of institutional discrimination against these or other groups will necessarily improve. **Ultimately, only** collective action **and** institutional evolution **can address systemic racism**. **The science is clear on one thing, though:** individual bias and discrimination are changeable**.** **Race-based prejudice and discrimination, in particular, are** created and reinforced by **many** social factors, **but they are** not inevitable consequences of **our** biology**.** Perhaps understanding how coalitional thinking impacts intergroup relations will make it easier for us to affect real social change going forward.

#### Racial hierarchies are socially constructed and malleable.

Zack 18—Professor of Philosophy at the University of Oregon [Naomi, 2018, *Philosophy of Race An Introduction*, Chapter 6: Social Construction and Racial Identities, pgs 123-5, Palgrave, DOI: 10.1007/978-3-319-78729-9]

Before the construction of race in science, there were ideas of different human groups but no conceptual system of difference applying to all humankind. The construction of race in science drew on existing societal ideas and created abstract typologies that in turn became the cognitive ele- ment of race in society. However, at this time, after typologies of race have been discarded in the biological sciences, racial constructions in society endure and continue to be reconstructed. Socially constructed race has a momentum of its own that people live out, and social scientists, scholars, and those in the creative arts continue to study and suggest ways to change. The construction and reconstruction of race in society has legal, social, economic, and cultural components, all of which taken together, in differ- ent combinations, or in isolated experience, make it seem to individuals that race is natural and inevitable, instead of human-made and historically and geographically contingent. Individuals have different physical traits that have already been selected as racial traits before their birth and that prior selec- tion forms a reality to be experienced—lived with compliance or resistance, or both. Such compliance reproduces or maintains and furthers preexisting social race, over time. Resistance has the potential to change the background of racial construction, although any particular act of resistance has unpre- dictable consequences, because it has to be interpreted, supported, and duplicated by other people, in order to be effective. Individuals belong to or are associated with racial groups that are imagined to have general traits and the individual herself comes to have pat- terns of behavior, expectations, and beliefs that pertain to how she regards and presents herself in racial terms. That is, although race is already present in the social world that a child and adult live in, the child and then the adult has the task of forming a racial aspect of the self and presenting that racial identity to others. Society identifies people racially and people come to have racial identities, both as single units and as parts of the groups with which they identify and to which they belong. Thus, to say that race is socially con- structed may refer to only one side of the process of social construction. Society, which is to say, other people, have constructed ideas about race and systems regulating behavior based on race. But human individuals are not mere mirrors of social institutions and the thoughts and actions of other individuals. A complete account of the social construction of race, therefore, includes its construction on the level of individual identities. The social construction of race and racial identities affect many aspects of human life in societies with racial systems, often in profound, unin- tended, and unpredictable ways. There are social constructions that are benign or neutral, for example, the money system and weather reports. Such benign and neutral social constructions usually do not purport to be caused by different underlying physical facts about members of distinct groups, which determine their nature. Race, however, is not a benign social con- struction, because it purports to be based on real biological differences that do not exist. Human aptitudes and capabilities are randomly distributed within different social racial groups, so that differences in achievement are not caused by those traits that society continues to consider racial traits— there are no biological racial traits in the scientific sense and no differences in human value or moral worth based on biological race. Rather, differences in achievement between racial groups are the result of the fact that social racial systems are hierarchical. Racial identities come with predetermined social status and differences in power. Another way of describing this is to say that disadvantaged racial groups and their members are oppressed by more advantaged racial groups and their members. Oppression is unjust treatment or control and when the objects of oppression are racial groups and their members, it is usually called racism. Racism will be the subject of Chapter 7, but it can be difficult to separate racism from the construction of race itself. One clear difference is that even though racial hierarchy is in itself oppressive, not everyone who bene- fits from a system of constructed race or racial hierarchy is necessarily a racist person. There are also aspects of oppression that do not begin from within positions of racial hierarchies, but originate in other hierarchies, such as wealth or gender. In order to account for the emergence of race as an idea and system in modernity, it is necessary to understand the non-racial forms of oppression that preceded race and led to the construction of race. Because racial systems are not caused by natural aspects of race—which do not exist—the underlying motivations for constructing those systems may be masked to participants, by ideology. Racial ideology is a false sys- tem of claims and beliefs about racial differences and racial groups that jus- tifies racial oppression, as well as racial disadvantage. After systems of race have been constructed, racial ideology may be used to justify the actions of oppressive groups and individuals. But racial ideology is psychic and sym- bolic, a form of discourse. To implement racial ideology and serve underly- ing powerful economic and political interests, social technologies of race are necessary (for example, new racial identifications). Ideology and social technologies of race may lead to new constructions of race and with them, new racial identities. The sections of this chapter address several aspects of the social construc- tion of race and identity. First, racial construction for economic reasons will be explored in terms of colonialism and global development. This will be followed by subjects pertaining to processes that occur inside of functioning systems of race: social technologies of race and racism; individual racial iden- tities; models for resisting and deconstructing race.

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#### China proves the entire counterplan fails.

Emily Feng 21. “China Detains Delivery Worker Who Tried To Improve Working Conditions” NPR. 04-12-21. https://www.npr.org/2021/04/12/986365859/china-detains-delivery-worker-who-tried-to-improve-working-conditions

During the pandemic, food delivery work has boomed in China. The detention of the sector's most prominent labor activist is now drawing attention to their difficult working conditions. You could think of 2020 as the year of the delivery worker. Delivery workers helped millions of Americans stay safer during the pandemic, and in China, they fed hundreds of millions of people who were in quarantine. **One delivery worker in China tried to improve working conditions, and now he's in detention,** as NPR's Beijing correspondent Emily Feng reports.

#### Convergence on antitrust goals is impossible. Bradford is an aff card.

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States agree that competitive markets and antitrust laws are beneficial. However, they disagree on the particular goals and priorities of antitrust enforcement. States also acknowledge the necessity to coordinate antitrust enforcement across jurisdictions but fail to agree on the specifics. These conflicting views on a globally optimal antitrust regime amount to a distributional conflict. A distributional conflict arises when the costs and the benefits of an international antitrust agreement are unevenly distributed among states, and when states therefore cannot agree on the focal point of coordination. 21 The long-standing distributional conflict between the United States and the EU is one of the principal impediments for a binding international antitrust agreement. Both the United States and the EU acknowledge the efficiencies that international antitrust cooperation could generate, but disagree as to the optimal content, the legal form, and the institutional framework of cooperation. 22 The U.S.-EU disagreement stems from some key differences that persist between the United States and the EU despite the increasing alignment of their antitrust laws over the last decade. 23 The United States and the EU agree that antitrust laws seek to maximize consumer welfare. However, social considerations, such as promotion of employment or protection of small enterprises, still play a role at the margins of the EU antitrust analysis. The EU also employs its antitrust laws to further European integration. Antitrust laws ensure that anticompetitive practices of private enterprise do not frustrate the efforts to remove trade barriers within the EU. This market integration goal has led to a more interventionist enforcement policy vis-à-vis vertical agreements, in particular territorial restraints that threaten to partition the common market. The EU is also more skeptical of market power and has a lower threshold in bringing cases against dominant companies ( see decisions against Microsoft and Intel). Similarly, the EU has also historically taken a harsher view towards vertical and conglomerate mergers ( see GE/Honeywell). While there is increasing convergence between the two key antitrust jurisdictions today, these remaining differences have led the United States and the EU to endorse international convergence each toward their respective antitrust laws. 24 The United States and the EU also disagree on the optimal institutional framework for antitrust cooperation. The EU supports a binding WTO antitrust agreement. This is consistent with the EU’s view that antitrust and trade policies are intrinsically linked. The United States, on the other hand, fears that antitrust would lose its exclusive focus on consumer welfare when enmeshed with trade policy considerations in the WTO. Instead, the United States has promoted antitrust cooperation within the ICN, which allows antitrust enforcers to cooperate without interference from the trade community. In addition to the U.S.-EU controversy, disagreement between developed countries and developing countries regarding the content and the costs of a prospective antitrust agreement has obstructed cooperation efforts. 25 Developed countries want to “level the playing field” by enhancing multinational corporations’ (“MNCs”) access to the developing-country markets. Developed countries also seek to reduce transaction costs involved in MNCs’ cross-border business transactions. 26 In contrast, developing countries are concerned about their inability to control the anticompetitive conduct of MNCs in their markets. 27 Developing countries also resist the idea of a level playing field, maintaining that they need to be able to shield their small domestic corporations from larger MNCs. Developing countries struggling with capacity constraints have also opposed WTO antitrust agreement because of the regulatory burden that new international obligations would impose on them. 28 Consequently, a critical impediment to antitrust cooperation is the diffi culty of overcoming the distributional confl ict between the United States and the EU on one hand, and the developed countries and the developing countries on the other. These distributional tensions have narrowed the scope for any feasible international agreement.