# Doubles

# 1AC

## 1AC---Round 5 & 6

### 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.

Frederic Jenny 19. ESSEC Business School and OECD Competition Committee. “POPULISM, FAIRNESS AND COMPETITION: SHOULD WE CARE AND WHAT COULD WE DO?” The Japanese Economic Review. Vol. 70, No. 3, September 2019. https://onlinelibrary.wiley.com/doi/full/10.1111/jere.12232

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.

### Democracy---1AC

#### Advantage 3 is Democracy.

#### Congressional inaction shifts power to less democratic institutions.

Spencer Weber Waller 19. John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law. "Antitrust and Democracy " Florida State University Law Review. 2019. https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1658&context=facpubs

It is disappointing that the U.S. Congress has more often focused on the minutiae of competition law and policy or conducted hearings on high profile mergers that, by design, cannot affect the eventual enforcement actions of the agencies. 160 There have been no major amendments of the antitrust laws since the 1970s. 16 1 Criminal penalties have been increased, but the private treble damage remedies as a whole have been largely left unchanged. 162 Exemptions and immunities have been expanded and contracted at the margins. 16 3 Budgets have been increased and lowered depending on the era and the overall political zeitgeist.

Unfortunately, much of Congressional attention to competition law has involved minor issues and outright petty matters. For example, Congress effectively killed a proposal that would have rationalized cooperation between the Antitrust Division and the FTC because it affected which Congressional committee had "jurisdiction" over the work of these agencies. 164 Even more petty was the unsuccessful effort of one Congressman to force the FTC to vacate its headquarters for an expansion of the national art museum.165

The opportunity costs for each hearing on such marginal issues, for example, whether professional baseball should continue to enjoy a partial exemption from the antitrust laws or grandstanding for constituents over the fate of a particular merger with a pronounced local effect, is high. Congress sacrifices time, money, and attention better used to study more important, broader issues of competition law and policy. Stated enforcement policy over unilateral conduct and merger policy have changed substantially between administrations and over time. Important guidelines and stated enforcement priorities have changed as well with little substantive Congressional involvement. 16 6 Critical decisions by the United States Supreme Court have changed the law in dramatic and subtle ways without significant Congressional input either before or after the decisions. 167

Perhaps Congress simply does not care about, or actually approves of, the continued evolution of United States antitrust law and policy in all its complexity. However, this silence or indifference has important consequences. It shifts power from the most democratic elected institutions to the more distant, less democratic institutions of agencies and courts to craft fundamental economic policy free from all but the most macro-level interventions or corrections.

#### That collapses court legitimacy and constitutional separation of powers.

David P. Ramsey 10. Associate Professor of Government at the University of West Florida. “The Role of the Supreme Court in Antitrust Enforcement”. May 2010. https://baylor-ir.tdl.org/bitstream/handle/2104/7960/david\_ramsey\_phd.pdf?sequence=3

White’s announcement of the rule of reason was not without its critics on the Court. Justice John Marshall Harlan, author of the Court’s opinion in the Northern Securities case, delivered a passionate dissent which, in the period immediately following announcement of the Court’s ruling in the Standard Oil case, was more widely covered in the press than White’s majority opinion. For Harlan, the real issue of the case was whether or not the Court would resist the temptation to amend the Sherman Act by a process of judicial legislation.28 Harlan places the decision in the context of the failed arguments of defendants in the Trans-Missouri and Joint Traffic arguments, who twice attempted to persuade the Court to amend or interpret the text of Sherman §1 prohibition of all agreements in restraint of trade to read all agreements ‘in unreasonable restraint of trade,’ and twice failed to do so.29 Given such precedents, Harlan found White’s decision now to incorporate the standard of reasonableness into the Court’s interpretation of the statute troubling not only because this would seem to **raise constitutional concerns** about judicial legislation, but also because it seemed to show such **blatant disregard** for stare decisis, and would thus help to **weaken** an important source of **institutional power** for the judiciary over time. 30 Finally, Harlan explained that he was worried that White’s adoption of a rule of reason would have **profound constitutional implications in future generations**, particularly the danger of judicial encroachment on the legislative power, and the danger that the Court, by something so small as inserting the word ‘reasonable’ into the Sherman Act’s prohibition of restraints of trade, might eventually come to **erect itself into a superlegislature**, just as Brutus and the Anti-Federalists had feared. Emphasizing the three “separate, equal and coordinate departments” erected by the Constitution, Harlan stresses the danger posed to our institutions should any one branch of the federal government begin to usurp the powers of another, and that this danger was all the more **prevalent and pernicious** in cases involving attempts to transcend constitutional powers in the name of the common good. Harlan closes with a passionate exhortation to resist this temptation to pursue the public good or further the legislative intent of Congress by surpassing the powers granted the Court in Article III. After many years of public service at the National Capital, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction. As a public policy has been declared by the legislative department in respect of interstate commerce, over which Congress has entire control, under the Constitution, all concerned must patiently submit to what has been lawfully done until the People of the United States—the source of all National power—shall, in their own time, upon reflection and through the legislative department of the Government, require a change of that policy.31 Though Harlan’s warning tends to be lightly dismissed by later critics, it must be remembered that at the time, federal involvement in regulation of the economy was minimal, and therefore the Court tended to defer to the political branches. Harlan’s reluctance to accept a court-made rule of reason was in part, then, an attempt to protect the Court from the political backlash that would likely result from being positioned at the vanguard of Progressive reforms. The Sherman Act was controversial enough as a statement of national economic policy without the Court adding to it an additional layer of discretionary power for the judiciary.

#### Rule of law is essential to stave off societal collapse.

Stephen Breyer 18. An associate justice of the Supreme Court of the United States. “AMERICA’S COURTS CAN’T IGNORE THE WORLD” The Atlantic. October 2018. <https://www.theatlantic.com/magazine/archive/2018/10/stephen-breyer-supreme-court-world/568360/>

Third, and finally, my legal examples suggest the importance of looking to approaches and solutions that themselves **embody a rule of law**. To achieve and maintain a rule of law is more difficult than many people believe. The effort is ancient, stretching back to King John and the Magna Carta, and still earlier. And the effort does not always succeed. I often describe to judges from other countries how, in the 1830s, a president of the United States, Andrew Jackson, when faced with a Supreme Court decision holding that northern Georgia (where gold had been found) belonged to the Cherokee Nation, is said to have remarked, “John Marshall [the chief justice] has made his decision, now let him enforce it.” Jackson sent troops to Georgia, but not to enforce the law. Instead they evicted the tribe members, sending them along the Trail of Tears to Oklahoma, where their descendants live to this day. Not for more than a century, a period that included the Civil War and decades of racial segregation, would the Supreme Court hold, in Brown v. Board of Education, in 1954, that racial segregation violated the Constitution. Yet the country did not abolish segregation the next year or the year after that. When, in 1957, a judge in Little Rock, Arkansas, ordered Central High School desegregated, the local White Citizens’ Council, supported by the governor, rallied in front of the school, letting no black child enter. It took more than judicial decisions to end segregation. It took a president’s decision to send 1,000 paratroopers to Arkansas. It took Martin Luther King Jr., and the Freedom Riders, and the words and deeds of countless Americans who were not lawyers or judges. Today the public has come to accept the rule of law. When the Court decided Bush v. Gore, a case that was unpopular among many, and was (as I wrote in dissent) wrongly decided, the nation accepted the decision without rioting in the streets. That is a major asset for a nation with a highly diverse population of 320 million citizens. We do not have to convince judges or lawyers that maintaining the rule of law is necessary—they are already convinced. Instead we must convince ordinary citizens, those who are not lawyers or judges, that they sometimes must accept decisions that affect them adversely, and that may well be wrong. If they are willing to do so, the rule of law has a chance. And as soon as one considers the alternatives, the need to work within the rule of law is obvious. The **rule of law** is the opposite of the arbitrary, which, as the dictionary specifies, includes the **unreasonable, the capricious, the authoritarian, the despotic, and the tyrannical.** Turn on the television and look at what happens in nations that use other means to resolve their citizens’ differences. For my generation, the need for law in its many forms was perhaps best described by Albert Camus in The Plague. He writes of a disease that strikes Oran, Algeria, which is his parable for the Nazis who occupied France and for the evil that inhabits some part of every man and woman. He writes of the behavior of those who lived there, some good, some bad. He writes of the doctors who help others without relying upon a moral theory—who simply act. At the end of the book, Camus writes that the germ of the plague never dies nor does it ever disappear. It waits patiently in our bedrooms, our cellars, our suitcases, our handkerchiefs, our file cabinets. And one day, perhaps, to the misfortune or for the education of men, the plague germ will reemerge, reawaken the rats, and send them forth to die in a once-happy city. The struggle against that germ continues. And the rule of law is one **weapon that civilization has used to fight it.** **The rule of law is the** **keystone of the effort to build a civilized, humane, and just society.** At a time when facing facts, understanding the local and global challenges that they offer, and working to meet those challenges cooperatively is **particularly urgent**, we must continue to construct such a society—a **society of laws**—together.

#### Judicial activism collapses democracy.

James Muffett 14. Founder & President of Student Statesmanship Institute and President of Citizens for Traditional Values. “The Danger Of Judicial Activism”. Michigan All Rise. 9-8-14. <https://michiganallrise.org/resources/the-danger-of-judicial-activism/>

There is a battle in our nation between those who believe that judges should follow the law as intended by the legislature, and those who think judges have latitude to interpret the law according to their view of what the law ought to be. The latter are referred to as, “activist judges.” When judges insert their own personal bias, they usurp the role of the legislators whom the citizens elect to represent them in deciding disputed, difficult policy issues. Thus, judicial activism **undermines the very basis of our representative democracy.** It can be argued that activist judges have done more damage to traditional, Judeo-Christian values than the other branches of government combined. The areas of greatest damage include free enterprise, human life, marriage, personal freedoms, property rights and religious liberty. Judges who usurp the authority of the people are **not merely incorrect; they are themselves unconstitutiona**l. And they are unjust. In fact, Justice White in his Roe v. Wade dissent opinion, wrote that the court had acted “**not in constitutional interpretation**, but in the unrestrained imposition of its own, **extra-constitutional value preferences**.” In addition to short-circuiting the democratic process, this judicial approach creates an environment of unpredictability which ultimately leads to **destabilization and more litigation.** When judges exercising the power of judicial review are guided by the text, logic, structure, and original understanding of the Constitution and the law, they deserve our respect and gratitude. By operating with this type of judicial oversight, they are playing their part to make constitutional republican government a reality. But where judges usurp democratic legislative authority by imposing on the people their moral and political preferences, under the guise of fairness or empathy, they should be severely criticized and resolutely opposed. It is time for all citizens to wake up to this **crisis** and work to elect “Rule of Law” judges who exercise constitutional authority only to enforce the law as written and ensure that laws apply to everyone equally.

#### Antitrust is key to democratic legitimacy---sets a precedent.

Daniel A. Crane 21. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. "Antitrust Antitextualism " Notre Dame Law Review. 1-28-2021. https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr

3. Implications for Interpretation

The phenomenon of antitrust antitextualism is important for understanding the U.S. antitrust system, its history, and the possibilities for its reform, but it also has significance for more general understandings of how statutes are written and how their interpretation functions or should function. Scholars have argued that Congress sometimes means statutory language to be purely expressive, indeed that it means for the courts not to give that language legal effect.262 But the story of antitrust antitextualism goes far beyond judicial excision of stray words or phrases from the antitrust statutes. In important instances, particularly with respect to the FTC and Robinson-Patman Acts, the courts have entirely rewritten the textual meaning and legislative purpose of the statute.263 Through a chronic cycle of legislative enactment, judicial disregard, and implicit legislative acquiescence, Congress and the courts have constituted the common-law system that judges and scholars across the political spectrum now consider normalized and perhaps even inevitable.

This pattern of judicial/legislative engagement (with the executive playing an enabling role) raises both analytical and normative questions for the jurisprudence of statutory interpretation. Analytically and descriptively, is antitrust law sui generis, or do other statutory domains exhibit a similar, but perhaps unrecognized, dynamic? Do the antitrust laws idiosyncratically operate in a space of equipoise between Jeffersonian idealism and Hamiltonian pragmatism, with Congress implicitly assigning itself the role of idealist orator while acquiescing as the courts provide pragmatic counterbalance? Or is this yin and yang phenomenon, disguised in the interpretive rhetoric of broad delegations and common-law method, a more general one, in maybe unappreciated ways? Once a pattern is observed in one legal domain, it tends to be observed soon in others as well. Finding a recurrence of the antitrust pattern elsewhere could provide new insights on statutory interpretation, separation of powers, and the de facto institutional roles of the legislative and judicial branches.

Normatively, there is much to question about the democratic legitimacy of the implicit system of legislative declaration and judicial reformation described in this Article. There seems little in it that either a committed textualist or a committed purposivist could defend, since the system entails the courts honoring neither what Congress wrote nor what it meant. To rehabilitate the system’s democratic legitimacy, a subtle purposivist might say that what Congress actually meant—in a deep sense—must be gathered from the norms of the system itself rather than from conventional evidence such as floor statements by members of Congress, committee reports, or other contemporaneous sources of public meaning. Perhaps members of Congress legislate against a backdrop of expectation that the courts will continue to read down new statutes to accommodate pragmatic efficiency interests, and consenting to this implicit system, the members feel liberated to express more in the statute than they actually mean as prescriptive. But if that is wholesome democratic practice, that case is yet to be made.

#### Democratic backsliding in the US spills over.

Larry Diamond 21. Senior Fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University. "A World Without American Democracy?". Foreign Affairs. 7-2-2021. https://www.foreignaffairs.com/articles/americas/2021-07-02/world-without-american-democracy?utm\_medium=referral&utm\_source=www-foreignaffairs-com.cdn.ampproject.org&utm\_campaign=amp\_kickers

Aprolonged global democratic recession has, in recent years, morphed into something even more troubling: the **“third reverse wave” of democratic breakdowns** that the political scientist Samuel Huntington warned could follow the remarkable burst of “third wave” democratic progress in the 1980s and the 1990s. Every year for the past 15 years, according to Freedom House, significantly more countries have seen declines in political rights and civil liberties than have seen gains. But since 2015, that already ominous trend has turned sharply worse: 2015–19 was the first five-year period since the beginning of the third wave in 1974 when more countries **abandoned democracy**—twelve—than transitioned to it—seven. And **the trend continues.** Illiberal populist leaders are **degrading democracy** in countries including Brazil, India, Mexico, and Poland, and **creeping authoritarianism** has already moved Hungary, the Philippines, Turkey, and Venezuela out of the category of democracies altogether. In Georgia, the dominance of the Georgian Dream Party has led to the steady decline of electoral processes and a breakdown in the rule of law. In Myanmar, the military overthrew the elected government of Aung San Suu Kyi, ending an experiment in partial democracy. In El Salvador, president Nayib Bukele staged an executive coup by removing the attorney general and Supreme Court justices who were obstacles to his consolidation of power. In Peru, democracy hangs from a thread as the right-wing autocrat Keiko Fujimori advances vague claims of election fraud in a bid to overturn her narrow electoral defeat to left-wing opponent Pedro Castillo. What is especially striking about this last case is that Fujimori’s gambit bears a grim resemblance to the lie perpetuated by former U.S. President Donald Trump and his followers about the 2020 presidential election. This is no coincidence. As the journalist and historian Anne Applebaum has observed, fictitious claims of fraud and “stop the steal” tactics are becoming a common means by which autocratic populists try to obstruct democracy. Such tactics have long been a source of instability in countries struggling to develop democracy. But the fact that the most recent iteration of the antidemocrat’s playbook draws heavily on precedents in the **world’s most important and powerful democracy** marks the start of a **dangerous new era.** Today, the United States confronts a **growing antidemocratic movement**, not just from the ranks of fringe extremists but also from a substantial group of officeholders—a movement that is challenging the very foundations of electoral democracy. Should this effort succeed, the United States could become the first ever advanced industrial democracy to fail—that is, to no longer meet the minimum conditions for free and fair elections as political scientists and other scholars of democracy define them. The **failure of American democracy would be catastrophic** not only for the United States; it would also have **profound global consequences** at a time when freedom and democracy are already **under siege**. As Huntington noted, the diffusion of democratic movements and ideas from one country to another has helped drive positive democratic change. Antidemocratic norms and practices can **spread in a similar fashion**—especially when they emanate from powerful countries. That is why the acceleration of a democratic recession into a democratic depression happened largely on Trump’s watch. And it is why no development would **more gravely damage the global democratic cause** than the democratic backsliding of its **most important champion.**

#### Democracy solves great power war.

Larry Diamond 19. PhD in Sociology, professor of Sociology and Political Science at Stanford University. “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5 The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of selfdoubting democracies. These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled. The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### It’s an impact filter---democracies are comparatively more stable than autocracies.

Kroenig 20 Matt. 4/3. Professor of government and foreign service at Georgetown University – you know who he is. “Why the U.S. Will Outcompete China” <https://www.theatlantic.com/ideas/archive/2020/04/why-china-ill-equipped-great-power-rivalry/609364/>) 1/20/2021

National-security analysts see China as one of the greatest threats facing the United States and its allies. According to an emerging conventional wisdom, China has the leg up on the U.S. in part because its authoritarian government can strategically plan for the long term, unencumbered by competing branches of government, regular elections, and public opinion. Yet this faith in autocratic ascendance and democratic decline is contrary to historical fact. China may be able to put forth big, bold plans—the kinds of projects that analysts think of as long term—but the visionary projects of autocrats don’t usually pan out. Watch White Noise, the inside story of the alt-right The Atlantic’s first feature documentary ventures into the underbelly of the far-right movement to explore the seductive power of extremism. Stream Now Yes, democratic governments are obligated to answer to their citizens on regular intervals and are sensitive to public opinion—that’s actually democracies’ greatest source of strength. Democratic leaders have a harder time advancing big, bold agendas, but the upside of that difficulty is that the plans that do make it through the system have been carefully considered and enjoy domestic support. Historically speaking, once a democracy comes up with a successful strategy, it sticks with the plan, even through a succession of leadership. Washington has arguably followed the same basic, three-step geopolitical plan since 1945. First, the United States built the current, rules-based international system by providing security in important geopolitical regions, constructing international institutions, and promoting free markets and democratic politics within its sphere of influence. Second, it welcomed into the club any country that played by the rules, even former adversaries, like Germany and Japan. And, third, the U.S. worked with its allies to defend the system from those countries or groups that would challenge it, including competitors such as Russia and China, rogue states such as Iran and North Korea, and terrorist networks. America can pursue long-term strategy in part because it enjoys domestic political stability. While new politicians seek to improve on their predecessor’s policies, the United States is unlikely to see the drastic shifts in strategy that come from the fall of one political system and the rise of another. Democratic elections may be messy, but they’re not as messy as coups or civil wars. Daniel Blumenthal: The Unpredictable Rise of China Open societies have many other advantages as well. They facilitate innovation, trust in financial markets, and economic growth. Because democracies tend to be more reliable partners, they are typically skillful alliance builders, and they can accumulate resources without frightening their neighbors. They tend to make thoughtful, informed decisions on matters of war and peace, and to focus their security forces on external enemies, not their own populations. Autocratic systems simply cannot match this impressive array of economic, diplomatic, and military attributes. David Leonhardt recently wrote in The New York Times, “Chinese leaders stretching back to Deng Xiaoping have often thought in terms of decades.” Commonly cited examples of that long-term thinking include the Belt and Road Initiative, a program that invests in infrastructure overseas; Made in China 2025, an effort to subsidize China’s giant tech companies to become world leaders in 21st-century technologies, such as artificial intelligence; and Beijing’s promise to be a global superpower by 2049. Since putting in place sound economic reforms in the 1970s, China has seen its economy expand at eye-popping rates, to become the world’s second largest. Many economists predict that China could even surpass the United States within the decade, and some have suggested that China’s model of state-led capitalism will prove more successful, in terms of economic growth, than the U.S. template of free markets and open politics. I doubt these predictions. Because autocratic leaders are unconstrained and do not have to contend with a legislature or courts, they have an easier time taking their countries in new and radically different directions. Then, when the dictator changes his mind, he can do it again. Mao’s autocratic China ricocheted from one failed policy to another: the Great Leap Forward, then the Hundred Flowers Campaign, then the Cultural Revolution. Mao aligned with the Soviet Union in 1950 only to nearly fight a nuclear war with Moscow in the next decade. Beginning in the time of Deng Xiaoping, China pursued a fairly constant strategy of liberalizing its economy at home and “hiding its capabilities and biding its time” abroad. But President Xi Jinping abandoned these dictums when he took over. As the most powerful leader since Mao—he has changed China’s constitution to set himself up as dictator for life—he could once again jerk China in several new directions, according to his whims, and back again. According to the Asia Society, he has stalled or reversed course on eight of 10 categories of economic reform promised by the Chinese Communist Party (CCP) itself. Moreover, Xi is baring China’s teeth militarily, taking contested territory from neighbors in the South China Sea and conducting military exercises with Russia in Europe. The problem for Beijing is that stalled reforms will stymie its economic potential and its confrontational policies are provoking an international coalition to contain them. The 2017 U.S. National Security Strategy declared great-power competition with China the foremost security threat to the U.S.; the European Union labeled China a “systemic rival”; and Japan, Australia, India, and the United States have formed a new “quad” of powers to balance China in the Pacific. Furthermore, the plans often cited as evidence of China’s farsighted vision, the Belt and Road Initiative and Made in China 2025, were announced by Xi only in 2013 and 2015, respectively. Both are way too recent to be celebrated as brilliant examples of successful, long-term strategic planning. A certain level of domestic political stability is a prerequisite for charting a steady strategic course in foreign and domestic affairs. But autocratic regimes are notoriously brittle. While institutionalized political successions in democracies typically lead to changes of policy, political successions in autocracies are likely to result in regime collapse and war. China’s “5,000 years of history” were pockmarked by rebellion, revolution, and new dynasties. Fearing internal threats to domestic political stability—consider the protests this year in Hong Kong and Xinjiang—the CCP spends more on domestic security than on its national defense. If you follow the money, the CCP is demonstrating that the government is more afraid of its own people than of the Pentagon. This domestic fragility will frustrate China’s efforts to design and execute farsighted plans. If threats to Chinese domestic stability were to materialize and the CCP were to collapse tomorrow, for example, Chinese grand strategy could undergo another seismic shift, including possibly opting out of competition with the United States altogether. Shadi Hamid: China Is Avoiding Blame by Trolling the World Autocracies have other vulnerabilities as well. State-led planning has never produced high rates of economic growth over the long term. Autocrats are poor alliance builders who fight with their supposed allies more than with their enemies. And the highest priority of autocratic security forces is repressing their own people, not defending the country. The world has undergone drastic changes in just the past few years, but these enduring patterns of international affairs have not. Some fear that Trump’s nationalist tendencies will erode the U.S. position, but the momentum of America’s successful grand strategy has kept the country on a fairly steady course. Despite Trump’s criticism of NATO, for example, two new countries have joined the alliance on his watch, including North Macedonia this week. The coronavirus has upended a sense of security in the U.S., leading many people into the familiar trap of lauding autocratic China’s firm response in contrast to the halting and patchwork measures in the United States. But there is good reason to believe that this assessment will be updated in America’s favor with the benefit of hindsight. Already we are seeing evidence that conditions are much worse in China than CCP officials are letting on and that China’s attempts at international “disaster diplomacy” are backfiring. It has been revealed that the CCP has continually misrepresented the numbers of COVID-19 infections and deaths in China, and European nations have rejected and returned faulty Chinese coronavirus testing kits.

#### The plan is key to reverse erroneous court judgement that distorted the purpose of antitrust law.

Daniel Hanley 21. A policy analyst at the Open Markets Institute. "Slate - How Antitrust Lost Its Bite" Open Markets Institute. 4-21-2021. https://www.openmarketsinstitute.org/publications/slate-how-antitrust-lost-its-bite

Antitrust is about determining and allocating the rights, privileges, and duties of all economic actors. When Congress originally enacted the Sherman Act, the law was intended to protect consumers, workers, and democracy from excessive concentrations of corporate power. Because of this reality, it is an inherently political area of law. The shift toward rooting it in economics, and making its application substantially more obscure than a bright-line rule, is effectively a means by the judiciary to strip the historical foundations of antitrust from the record and instead substitute its own judgment on what the priorities are for the economy and how it should be structured.

When combined with the rule of reason, the judiciary’s consumer welfare framework effectively erases Congress’ intent for the antitrust laws to operate as a “comprehensive charter of economic liberty” that “does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers.” Such values are best determined by members of the elected legislature rather than unelected judges, a point ironically acknowledged by the Supreme Court in 1972.

Lower federal courts today continue to push the consumer welfare standard even further by, in violation of controlling Supreme Court precedent, weighing the competitive harms of a dominant firm’s conduct against one group to the benefits provided to another group. In ongoing litigation against the NCAA that was heard by the Supreme Court last week, the district court judge ruled that the NCAA’s compact with universities to set a ceiling on the amount of compensation that student-athletes can receive is legal because of the reputed benefit consumers derive from watching athletes knowing there is a cap on their compensation. The court employed the rule of reason to arrive at this result. In an alternative enforcement regime, the NCAA would be a per se illegal employer cartel that is suppressing workers’ wages.

Comprehensive empirical analysis has revealed that the rule of reason has been a rubber stamp for even the most egregious antitrust conduct. A 2009 analysis revealed that 97 percent of cases analyzed under the rule of reason result in victories for defendants. That means corporations are effectively shielded from most antitrust violations.

Part of the reason for such a skewed result in favor of antitrust defendants is that dominant firms have access to high-salaried economists that are able to manipulate analyses to mask the corporation’s conduct to look like it is operationally efficient instead of engaging in predatory practices. Such a situation also deters antitrust litigation because a plaintiff will also have to incur the cost of an economist—which can cost several thousand dollars and, in some cases, several hundred thousand dollars. Thus, the battle over the legality of a business tactic under a consumer welfare framework and rule of reason legal analysis depends on access to immense financial capital and judicial appeasement of policies that favor corporate integration rather than common notions of fairness, equity, and deconcentrated markets—which was the original purpose of the antitrust laws.

Despite controlling Supreme Court precedent prohibiting the use of economics in certain antitrust violations, courts now routinely use it to justify corporate consolidation. For example, in the context of merger analysis, the economization of antitrust has led courts to believe and depend on theoretical assumptions on how mergers are beneficial for society and consumers. In the case of AT&T and its pursuit of acquiring Time Warner in 2018, the corporation stated its merger would produce efficiencies and save customers money. District Court Judge Richard Leon was persuaded by AT&T’s statements holding that vertical integration is able to shrink its costs and will “lead to lower prices for consumers.” But such assumptions have been categorically repudiated by researchers. In one example, the economist John Kwoka found that 80 percent of studied mergers led to high prices and even reduced output. Other studies have found equivalent results. In the context of AT&T, subsequent evidence showed that AT&T did raise prices on consumers.

As Congress considers enacting new legislation, it must start by reclaiming control over antitrust by enacting laws with clear rules that could deter exclusionary conduct and greatly simplify the litigation process for plaintiffs. Moreover, instead of just restoring many of the historical bright-line rules that the judiciary has eroded over the last 60 years, new laws should go further to ensure that markets remain deconcentrated and to promote economic fairness. For example, Congress could enact strict prohibitions on firms entering certain lines of business, such as AT&T being prohibited from entering the computer industry in 1956, or ban the use of specific competitive practices outright, such as noncompetes that restrict the mobility of workers. Rules like these ensure the markets are structured by publicly accountable institutions to incentivize socially beneficial corporate conduct, such as investments in research and development and product quality.

Importantly, rules-based laws would also ensure the judiciary is adhering to Congress’ directive to keep markets deconcentrated and acknowledge that the judiciary is not a reliable safeguard for smaller independent firms and workers who often do not have access to significant amounts of capital to litigate an antitrust lawsuit. In fact, in commonly applied rules for how judges interpret Congress’ laws, the judiciary views ambiguity as an opportunity to fill any legal gaps with its interpretation and ideology.

History has consistently shown that only bright-line rules will lead to an effective and vigorous enforcement environment, as they do in other areas of law, and prevent the judiciary from favoring dominant economic enterprises and distorting the antitrust laws to preference increased concentration. The Supreme Court’s original development of the rule of reason and its subsequent gutting of the enforcement of the Clayton Act in the 1930s is particularly illustrative of why bright-line rules are necessary.

### Plan---1AC

#### The United States Federal Government should prohibit 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 Advantage

## Modeling Advantage

## Democracy Advantage

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

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

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

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

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

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

Arguments for and against Forms of Capitalism

The Argument against Capitalism

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

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

The Argument for Well-Regulated Capitalism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ASPEC

## T Prohibit

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

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

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

#### Prohibitions are any proscribed conduct in antitrust.

Margaret V. Sachs 01. Robert Cotten Alston Professor of Law, University of Georgia School of Law. A.B. 1973, Harvard University; J.D. 1977, Harvard Law School. “Harmonizing Civil and Criminal Enforcement of Federal Regulatory Statutes: The Case of The Securities Exchange Act Of 1934”. https://www.illinoislawreview.org/wp-content/uploads/2001/06/Sachs.pdf

Many federal regulatory statutes are hybrid statutes—their prohibitions1 are enforceable in criminal actions as well as in private or govern- mental civil actions (or both).2 Leading examples include the Sherman Antitrust Act,3 the Clean Water Act,4 the Truth in Lending Act,5 the False Claims Act,6 the Racketeer Influenced Corrupt Organizations Act,7 the Federal Food, Drug and Cosmetic Act,8 and the Securities Exchange Act of 1934.9 Hybrid statutes present an important question that has divided courts but received virtually no attention from legal scholars—can the same prohibition mean different things in different enforcement contexts?10

---FOOTNOTE 1 STARTS---

1. For purposes of this article, the term “prohibition” refers to the part of the statute that identifies proscribed conduct. The plaintiff must prove that the defendant engaged in this conduct in order to establish a prima facie case.

---FOOTNOTE 1 ENDS---

#### Anticompetitive business practices distort competition.

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

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

#### “Expand the scope of antitrust” includes axing consumer welfare.

Diana L. Moss 17. "Antitrust and Inequality: What Antitrust Can and Should Do to Protect Workers". American Antitrust Institute. 4-25-2017. https://www.antitrustinstitute.org/work-product/antitrust-and-inequality-what-antitrust-can-and-should-do-to-protect-workers/

How much of the burden for solving the labor and inequality problem should antitrust shoulder? Some propose wholesale changes to the standard underlying the laws in order to make antitrust go further and faster. They would swap out the existing “consumer welfare” standard for a new “public interest” one. A public interest standard would expand the scope of antitrust to directly consider the effects of anticompetitive activities on employment. Scrapping the existing standard in the name of combatting inequality would be shortsighted, for a couple of reasons.

#### Expand the scope includes banning any practice.

Paolo Buccirossi et al. 09. LEAR. Lorenzo Ciari, Lear and EUI. Tomaso Duso, Humboldt University Berlin and WZB. Giancarlo Spagnolo, University of Rome Tor Vergata, SITE, EIEF, CEPR. Cristiana Vitale, LEAR. “Measuring the deterrence properties of competition policy: the Competition Policy Indexes”. https://www.ssoar.info/ssoar/bitstream/handle/document/25822/ssoar-2009-buccirossi\_et\_al-measuring\_the\_deterrence\_properties\_of.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2009-buccirossi\_et\_al-measuring\_the\_deterrence\_properties\_of.pdf

Also Hilton and Deng have tried to provide a quantitative summary measure of competition law. Their objective has been to gauge the size of the overall “competition law net” by collecting information on the breadth of the law and on its penalty and defence provisions in 102 countries over the time period January 2001 to December 2004.47 Their scope index differs from the CPI in that it tries to provide a summary description of the areas covered by competition law rather than an evaluation of its quality. Indeed, the scope index does not attempt to measure how the law is effectively enforced, nor the degree of independence of the CA or the quality of the law. 48

---FOOTNOTE 48 STARTS---

48 The information collected concerns the geographical scope of competition law, the remedies it allows, the type of private enforcement available to the damaged parties, the merger notification and assessment procedure, and the type of abuses of dominance and restrictive trade practices prohibited.

#### Increase means greater---doesn’t require preexisting.

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

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

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

While no court has considered whether an increase requires a previous charge within the meaning of FCRA, the Sixth Circuit has employed the term "increase" in an analogous circumstance, stating, "An increase in the base price of an automobile that is not charged to a cash customer, but is charged to a credit customer, solely because he is a credit customer, triggers [the Truth in Lending Act's] disclosure requirements." Cornist v. B.J.T. Auto Sales, Inc., 272 F.3d 322, 327 (6th Cir. 2001). Defined in this manner, an increased charge is a charge that is higher than it would otherwise have been but for the existence of some factor that causes the insurer to charge a higher price.

#### It’s about liquor---Emory = yellow.

Hadley 1909 – Judge

Hiram E. Hadley, McPherson v. State, 174 Ind. 60, Supreme Court of Indiana, December 1909, LexisNexis

In the majority opinion it is conceded "that there is a marked difference" between unqualified prohibition of the sale of intoxicating liquors and the regulation of such sale. It is said in the opinion that "to regulate, restrict and control the sale implies that the sale shall go on within the bounds of certain prescribed rules, restrictions or limitations." Citing Sweet v. City of Wabash (1872), 41 Ind. 7; Duckwall v. City of New Albany (1865), 25 Ind. 283; Loeb v. City of Attica (1882), 82 Ind. 175, 42 Am. Rep. 494.

"Prohibition," states the majority opinion, "as applied to the liquor traffic, implies putting a stop to its sale as a beverage; to end it fully, completely and indefinitely. So, if the purpose of the act in question is to authorize the exercise of unqualified prohibitory power, as usually understood by the term, the act is void because its subject is not expressed in the title." The court might properly have further said [\*\*\*45] that if the act under its provisions is not one to regulate the sale of intoxicating liquors it is void, for the reason that it does not meet or respond to the subject as expressed in its title.

## States CP

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

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

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

#### The DOJ and FTC undermine states.

The Open Markets Institute and Service Employees International Union 19. “How the Antitrust Agencies Can Help—Instead of Hurt—Workers”. https://www.justice.gov/atr/page/file/1217856/download

The DOJ and the FTC have largely failed American workers today by allowing a concentration crisis in scores of industries to weaken competition for labor. Instead of actively policing mergers for harms to workers, they have let employer-side concentration reach very high levels. Troublingly, when the FTC and DOJ have acted against practices in labor markets, the two agencies often have used antitrust laws to either undermine efforts by employees and states to challenge abusive behavior by employers or actually targeted efforts by workers or professional to work together. The FTC, for instance, has filed numerous complaints against workers for engaging in collective bargaining and other joint action. Furthermore, the FTC has campaigned against state and local occupational licensing rules that can enhance the bargaining power and earnings of workers, professionals, and independent entrepreneurs. The DOJ meanwhile has endorsed legal standards that would empower franchisees to collude against workers.

The DOJ’s and FTC’s general inactivity against employers and activity against workers reinforce and deepen inequality between the individual and the corporation. The agencies should reorient their enforcement priorities and focus on protecting workers from employers rather than on interfering with the basic rights of workers, professionals, and independent entrepreneurs to organize.2

## FTC/DOJ CP

#### Courts say no and congress backlashes.

Alison Jones and William E. Kovacic 20. Alison Jones, King’s College London, London, United Kingdom. William E. Kovacic, King’s College London, George Washington University, and United Kingdom Competition and Markets Authority, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy". SAGE Journals. 3-20-2020. https://journals.sagepub.com/doi/10.1177/0003603X20912884 https://journals.sagepub.com/doi/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Perm do the counterplan---the FTC expands antitrust laws.

Michael Gleason et al 7-15-21. Gleason is a member of the American Bar Association's Section of Antitrust Law, serves as a vice chair of the ABA Section of Antitrust Law's Mergers & Acquisitions Committee, and is a partner at Jones Day. Lin Kahn is a partner at Jones Day and served as lead litigation and trial counsel at the FTC. J. Bruce McDonald is a partner at Jones Day, served as deputy assistant attorney general with the United States Department of Justice, served as chair of the State Bar of Texas' Antitrust & Business Litigation Section, as chair of the ABA Antitrust Section's Transportation & Energy Committee, and chair of the Houston Bar Association's Antitrust Section, and as adjunct professor at the University of Houston Law Center. Craig Waldman co-chairs Jones Day's global Antitrust & Competition Law Practice, served as an attorney in the Federal Trade Commission's Mergers I division, served as an adjunct professor at both Berkeley and Hastings Law Schools, has lectured at Stanford Business School, has served in numerous roles within ABA Antitrust Leadership, and has served on the board of directors of Global Strategies. “FTC Signals Aggressive Antitrust Policy as Part of Government Pro-Enforcement Agenda”. JD Supra. https://www.jdsupra.com/legalnews/ftc-signals-aggressive-antitrust-policy-7983021/

The Result: A majority of the Commission, along party lines, voted to expand its interpretation of the agency's power to combat anticompetitive conduct and, at the same time, contract procedural safeguards. Specifically, the FTC voted to rescind a policy that defined limits to challenge "unfair competition" violations under FTC Act Section 5. The FTC also voted to remove certain restrictions on its rulemaking and to empower individual Commissioners to serve subpoenas in certain industries, enabling a single Commissioner, rather than a majority of the Commission, to launch an industrywide investigation. Looking Ahead: The measures can be expected to result in increased FTC activity in the form of more rulemaking, investigations, and enforcement. The changes are consistent with recent proposals by the administration, legislators, and other policymakers to expand the U.S. antitrust laws to target perceived problems with industry concentration and dominant companies. Nevertheless, the goal of increased enforcement may be hindered by the well-established framework for antitrust analysis adopted by federal courts, the agency's current merger guidelines, and career staff.

#### Courts block it---and it drains resources.

Bryan Koenig 6/29. Senior competition reporter at Law 360. "Is The Consumer Welfare Standard On FTC's Chopping Block?." Law 360. Accessed via Nexis Uni. 6-29-2021. https://www.law360.com/articles/1398386

If Khan does rescind the Section 5 statement in the name of moving beyond the consumer welfare standard however, observers note that it would not be the standard's immediate death knell. Courts have come to rely on the standard, which is not based on statute, for assessing enforcement actions, and the FTC would need to persuade judges to try something new.  
  
"Since existing U.S. case law recognizes the consumer welfare standard, new FTC suits that ignore consumer welfare and competition on the merits would likely fail, leading to a waste of public and private resources," said Alden Abbott, a former FTC general counsel who is now a senior research fellow with George Mason University's Mercatus Center and is also critical of the move.

## Courts CP

#### Courts or Congress can enlarge the scope of antitrust prohibitions.

Donald F. Turner 90. Professor of Law, Georgetown University Law Center. "The Virtues and Problems of Antitrust Law," Antitrust Bulletin 35, no. 2 (Summer 1990): 297-310.

However, unsound interpretations of antitrust laws have adverse economic effects. Court-formulated rules have varied from time to time over the years since antitrust statutes were passed, and the scope of antitrust prohibitions were either enlarged or reduced. While there are extensive disputes as to what the precedents' defects have been and are, it is generally recognized that antitrust law has had and still has some undesirable features that the courts or Congress should correct.

#### Congress key to predictability---the counterplans constitutional objections cause confusions.

Derrian Smith 19. J.D., 2019, Indiana University Maurer School of Law; B.A., 2016, Indiana University - Indianapolis. "Taming Sherman's Wilderness." Indiana Law Journal, vol. 94, no. 3, Summer 2019, p. 1223-1246. HeinOnline.

CONCLUSION

The Sherman Act, by its vague and sweeping language, is a broad delegation of authority to the Supreme Court. Congress sent us into the wilderness-law students and generalist judges alike. In light of swelling desire for the antitrust laws to be more effective against modern-day competition foes, Congress should update the Sherman Act. The common-law approach has not achieved the stability

one would expect of a statute levying hefty criminal sanctions, and the Court appears to approximate agency rulemaking on an increasingly frequent basis. Delegating rulemaking authority to an antitrust agency may be a viable solution. But there are some draw backs-namely constitutional objections to which the Sherman Act may be vulnerable, especially if an agency delegation were not accompanied by some level of additional statutory clarity. Even if the agency solution proves unworkable, Congress should address head-on the growing need for clarity, predictability, and stability, which the Sherman Act significantly fails to provide.

## PIC

#### Doesn’t solve modelling or inequality---exemptions make the plan’s doctrine incoherent.

Peter C. Cartensen 20. \*\*Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School. “The Incoherent Justification for Naked Restraints of

Competition: What the Dental Self-Regulation Cases Tell Us About the Cavities in Antitrust Law.” 5/10/20. Loyola University Chicago Law Journal. Vol 51, pg. 679-742.

Despite the apparent lack of consistency in these outcomes, they reflect an implicit logic that is also observable in a variety of other comparable areas where exemptions from, or preemptions of, antitrust law are at issue. But the flawed nature of conventional antitrust categories and their inappropriate usesI1 has obscured the potential coherence of this unarticulated framework and has led advocates and judges into using terms that do not adequately describe the analytic process being used. As a result, some decisions are highly questionable. This is especially true with respect to the implicit assertion that courts and agencies have the right and capacity to decide the merits of the substantive terms of regulatory regimes as a matter of antitrust law. Moreover, the apparent acceptance of some cartelistic restraint as "reasonable" and so lawful creates a serious inconsistency with the antitrust doctrine of per se illegality for cartels.

#### Exemptions collapse the industry---turns the net benefit.

Bruce H. Kobayashi & Joshua D. Wright 20. \*\*Paige V. and Henry N. Butler Chair in Law and Economics at Antonin Scalia Law School, George Mason University. \*\*Executive Director of the Global Antitrust Institute, holds a courtesy appointment in the Department of Economics at Antonin Scalia Law School, George Mason University. “Antitrust Exemptions and Immunities in the Digital Economy.” 11/19/20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3733747

Antitrust laws seek to foster competition and thereby maximize consumer welfare.11 However, broad exemptions of specific industries from the antitrust laws do not serve this goal. As the Antitrust Modernization Commission explained, “A proposed exemption should be recognized as a decision to sacrifice competition and consumer welfare. . . .”12 Antitrust exemptions benefit “small concentrated interest groups while imposing costs broadly upon consumers at large.”13 These costs generally manifest as higher prices, reduced output, lower quality, and reduced innovation.14

Congress has created antitrust exemptions for specific industries such as railroads,15 insurance companies,16 ocean shippers,17 certain agricultural cooperatives,18 and non-profits.19 Moreover, the FTC Act explicitly exempts banks, savings and loans institutions, federal credit unions, common carriers, domestic and foreign air carriers— as they are regulated under different federal law.20

Broad antitrust exemptions are not only economically unsound, but also do not protect procompetitive purposes already protected by the Sherman Act. 21 Immunizing industries from antitrust liability allows for coordination among rivals. These cartels have the power to “jointly set prices or other competitive terms” which will “tend to increase the prices for services beyond what they would otherwise be in the presence of competition.”22 Competitors will no longer have incentives to innovate, and consumers will suffer from the lack of cost reduction or increased product quality.

Industry-level exemptions promote rent-seeking and often lead to less competition, not more. Antitrust exemptions create a classic public-choice problem. Industries with special exemptions are highly concentrated and often times highly political, therefore, the individual groups benefit greatly from the exemptions’ privileges. 23 Consumers, on the other hand, may not feel the harm of higher prices as strongly on an individual level, even though the aggregate harm to consumer welfare is significant. Therefore, individual consumers have little incentive to pursue repeals of existing exemptions.24

Even if consumers had an individual incentive to repeal harmful antitrust exemptions, the actual process is difficult. Exemptions are not removed rapidly, as it takes time for industries to alter the fundamental aspects of their businesses.25 While exemptions might have been enacted to protect competition in certain industries, they now pose a dangerous risk of institutionalizing anticompetitive conduct.26 Antitrust exemptions replace competition with government regulation thereby reducing incentives to compete vigorously through reduced price or improved product quality.27

The case for industry-specific antitrust exemptions is weak. The argument that specific industry exemptions are necessary to protect facially anticompetitive acts that actually have procompetitive effects28 is rendered dubious by the fact that courts analyze most conduct under the rule of reason.29 Moreover, original justifications for certain industry exemptions are no longer backed by economic theory. In the late nineteenth and early twentieth century some exemptions were created with the idea that “regulation was preferable to competition or that there were natural monopolies that needed to be controlled.”30 However, it is evident that “consumers benefit most when competitors freely compete”; therefore, economic regulations should focus on “preserving a competitive marketplace” rather than supporting anticompetitive collusion.31 Industry exemptions replace vigorous competition with government regulation.32

#### Perm do the counterplan---employers can justify exemptions.

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

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

#### Workers leave unprotected jobs.

CEAIB 16. Council of Economic Advisers Issue Brief. Agency within the Executive Office of the President, charged with providing the President objective economic advice on the formulation of both domestic and international economic policy. “Labor Market Monopsony: Trends, Consequences, and Policy Responses.” October 2016. https://obamawhitehouse.archives.gov/sites/default/files/page/files/20161025\_monopsony\_labor\_mrkt\_cea.pdf

The harms of limited labor market competition can be understood by first considering how wages (and any non-wage compensation) are determined when firms must compete with each other for workers. In a competitive labor market, each firm will bid up the wage to recruit workers from other firms as long as the revenue it can earn by hiring another worker exceeds the wage it must pay—establishing a close link between wages and worker productivity. Because firms in a perfectly competitive market all bid for the same workers, no firm can pay less than what others are willing to pay. If a firm did attempt to set wages below the market rate, its workforce would be quick to find alternative employment. As a result, competitive firms must all pay wages that are determined by the market, and compensation is equalized across similarly productive workers for similar types of jobs.

In contrast, when there are barriers that limit wage competition between firms, market discipline that compels employers to pay the going wage is weakened. In this case, assuming that similarly productive individuals vary in their “reservation wages” (the lowest wage they are willing to accept)—for example, because some must commute from longer distances—a monopsonistic firm faces a choice: it can set the wage high enough to recruit even those with high reservation wages, or it can limit employment to those who are willing to work for less and thereby keep wages low. Economic theory shows that firms with monopsony power have an incentive to employ fewer workers at a lower wage than they would in a competitive labor market. What the monopsonistic firm loses in reduced output and revenue, it more than makes up in reduced costs by paying lower wages. In other words, by recruiting less aggressively, paying less, and sacrificing some employment, employers with monopsony power can shift some of the benefits of production from wages to profits.

As suggested above, the implications of monopsonistic wage-setting extend beyond the redistribution of wages to profits. First, it can lead to inefficient reductions in employment and output, where some workers who would have been willing to work at the competitive market wage are never hired, and the output they would have produced is produced less efficiently by other firms if at all. Notably, firms are willing to incur this reduction in employment only if it allows them to pay lower wages or to reduce costs through inferior benefits or work conditions. An important implication is that monopsonistic employers can be induced to hire more labor if their ability to set wages below the level in a competitive market is constrained—for example, by a collective bargaining agreement or a minimum wage.

#### FTC challenging mergers now.

Muris ’20 – Professor of Law at George Mason, former Chairman of FTC, Senior Counsel at Sidney Austin LLP, JD from UCLA,

Timothy Muris, “Response to Subcommittee on Antitrust, Commercial, and Administrative Law Committee on The Judiciary U. S. House of Representatives” April 17, 2020, <https://judiciary.house.gov/uploadedfiles/submission_from_tim_muris.pdf>

Finally, the Committee asks about agency resources and performance. The last section below briefly addresses the continual need for the antitrust agencies to address business practices as they evolve, as well as their own performance record. Such evaluation is necessary: ever a UCLA Bruin, I remain devoted to legendary coach John Wooden‘s maxim that “when you are through learning, you are through.” The section thus offers multiple examples of successful and bipartisan FTC efforts to improve enforcement to the benefit of consumers. In the key healthcare sector, American consumers continue to benefit from the FTC’s hard work. **After losing seven consecutive hospital merger challenges** before I arrived, upon my direction the FTC worked to devise a new enforcement plan by incorporating fresh economic thinking and issuing retrospective case studies showing that several hospital mergers had indeed harmed consumers. This plan resulted in a successful challenge to a consummated hospital merger that served as a template for future enforcement, leading to Obama administration victories in three separate courts of appeal endorsing the FTC’s approach. Such success did not require abandonment of the consumer welfare standard, nor a dramatic increase in agency resources. Indeed, as discussed below, my predecessor as FTC chairman, Bob Pitofsky, did much more for American consumers using the consumer welfare standard with just 1,000 staff than did the agency in the 1970s when it had far greater resources (1,800 staff by the turn of the decade), but was motivated by an antitrust policy that was, instead, at war with itself.

#### Food prices don’t cause conflict---reject their bad studies.

Demarest 15—PhD Researcher at the Centre for Research on Peace and Development [Leila, “Food price rises and political instability: Problematizing a complex relationship,” *The European Journal of Development Research*, Vol. 27, No. 5, p. 650-671, Emory Libraries]

6. Conclusions and Way Forward

While some progress has been made in improving our understanding of the linkages between rising food prices and conflict, several important gaps remain. Firstly, notions of conflict and political instability are often used interchangeably, while these concepts and the relationships between them remain to some extent vague. The ‘food riot’ concept in particular leads to confusion. Although it is popularly seen as a violent rise of the masses, in reality, many peaceful events are gathered under this term, while violence is often committed by the state rather than by hungry consumers. The term also presupposes that food is the central issue at hand, which does not necessarily have to be the case. Many misunderstanding arise from the second gap identified in this paper: the uncritical data gathering based on international news reports. Not only are these remarkably inconsistent, they also make use of classifications which are not scientifically investigated. Finally, causal mechanisms in the relationship between rising food prices and conflict often remain assumptions in the literature and lack empirical foundation. Three crosscutting avenues for improvement therefore exist: better concept definitions, better data gathering, and more focus on contexts.

Clearly defined concepts and categorizations of conflict and instability are a necessary foundation for research on the linkages between rising food prices and conflict. For (food) protests in particular, purposeful categorizations require an enhanced insight in the events that took place on the ground. Local news sources for data gathering can prove to be more reliable than Western (English) media to accomplish this. Event descriptions are also likely to be more detailed in local sources, which allows for a first-hand qualitative analysis of causes and context.

As international food prices are likely to remain high, improving our understanding of the causal mechanisms which can lead to conflict remains crucial. We can draw important lessons from the literature on poverty and conflict, resource scarcity and conflict, and regime transition in Africa. The causal role of economic factors alone has continuously been questioned, and ‘context’ or prevailing political, economic, and social factors play a crucial role in the conflict outcome. The argument that adverse economic shocks seem more of a trigger to conflict rather than an important cause is not particularly remarkable in itself. Yet while many authors acknowledge this, the focus often remains on the trigger. Resource scarcity, climate change, population growth, or food insecurity often remain the starting point of analyses, with researchers consequently tracing the divergent (theoretical) possibilities for conflict. In the end, most admit that these factors do not automatically lead to conflict everywhere, and stress the importance of context. Because the theoretical possibilities for conflict are so large, however, the context factor remains rather understudied with as most agreed upon notions that elements of ‘grievance’ and ‘collective action’ are required.

It is hence important to focus more on the ‘contexts’ that can lead to conflict and, in doing so, to make the distinction between different forms of conflict. This also implies a data collection exercise. Contextual data are currently collected at the aggregate, national level, and only on a yearly basis, which can lead to spurious relations. While the use of these variables is increasingly questioned in civil war studies, we can also doubt their strength in the study of highly localized, one-time events such as riots. I particularly make the case for ‘bringing politics back in’. The policies taken by the government are crucial in the violent escalation of social conflict (e.g. accommodation versus repression), but the only variable currently in use to explain state behaviour seems to be the country-level regime type variable (Polity IV or Freedom House), which is also used with regards to highly localized conflicts. Other ways in which politics matter, can be the strength of the political opposition. The Muslim Brotherhood in Egypt, for example, was probably better organized than other opposition groups to make use of economic unrest.

## K

#### Legal proceduralism is good---we link turn elite and conservative capture.

Jonathan Murphy 10. Senior Lecturer in International Management @ Cardiff Business School. “Democracy? That’s so last year”: exploring the backlash against democracy promotion” Paper presented to Critical Governance Studies conference Warwick University, December 13 – 14 2010 http://www2.warwick.ac.uk/fac/soc/wbs/projects/orthodoxies/papers/101213\_muphy\_j.pdf p. 19-22

There is a long tradition on the Left of ambivalence towards democracy, and scepticism regarding the idea of democracy promotion. There are various underlying reasons which are often present in an undifferentiated amalgam. From Marxism there is doubt about ‘bourgeois democracy’, related to the view that the state is the ‘armed wing of the bourgeoisie’. In other words, the state is not a neutral arbiter between different interests but systematically acts to repress the common interest in favour of the ruling class. Marx was ambivalent about the potential of democracy and although his schema of socioeconomic progress involved the overthrow of bourgeois rule and the installation of a dictatorship of the proletariat, he also indicated that in established democracies such as Britain, transformatory change might be possible through democratic elections. This ambivalence solidified into a full‐blown split in the socialist movement in the first years of the twentieth century with the communist wing arguing that only revolution could bring about real change, while social democrats proposed change through constitutional means, rejecting the concept of revolutionary transformation in favour of democratic gradualism; evolutionary socialism (Bernstein, [1911] 1961). It is important to historically contextualize the debate within the socialist movement about democracy. Universal suffrage was not instituted in any country prior to the beginning of the 20th century, and thus the battle for social justice was waged against largely authoritarian regimes. Once democratic systems were established in the most developed countries, it became crucial to understand why socialists did not automatically win elections. Much of early twentieth Western Marxism was devoted to understanding the phenomenon of workers apparently acting against their self‐interest by voting for – and supporting – anti‐socialist political parties. In this context, the work of Lukacs ([1920] 1967) and Gramsci (1989) on class consciousness, reification, and hegemony is particularly significant. Despite the continued application by Leftist movements and leaders of the Bonapartist model for several decades, particularly in the developing world, there was a gradual acknowledgement within the Left that hegemonic orders in complex contemporary societies depend on multi‐faceted consent. The democratic institutions in contemporary society are only one of the markers of consent, but political movements need to dominate those institutions in order to secure the formal and symbolic legitimacy required to implement a political programme. Therefore, notwithstanding an acknowledgement of the structured disadvantage faced by progressive social movements in the democratic system, engagement with the democratic system is a necessary component of leftist strategy, and rejectionism is likely to disengagement and apathy (Laclau, 2000: 290). Moving beyond instrumental reasons for democratic engagement I would like to present two normative arguments in favour of democracy as an important aspect of the critical governance agenda. First, democracy provides an opportunity for engagement in debate about the nature of society. It is not necessary to accept the arguably naïve precepts of Habermas’s deliberative democracy to comprehend that a social order based on non‐violent resolution of conflict is more likely to present opportunities for egalitarian social change than one enforced by violence that is more likely to be held by elites, or more definitively, violence defines elitism. Mouffe (2000) describes the objective of democratic engagement as agonism. Agonism essentially entails acknowledgement of irreconcilable difference between political programmes, but common acceptance that debate should remain within the institutional framework of democracy. More fundamentally, one of the experiences of actually existing socialism has been that the practice of power is problematic notwithstanding the overt objective with which power is sought and held. Blaug (2000, 2010) argues that the exercise of power leads inevitably to a form of anti‐social madness. Power has a metamorphic effect on personality; “emergence of an overestimated self”, in which its holders tend to lose touch with others’ interests, and tend to disparage and oppress subordinates. Power corrupts both leaders and subordinates, corrupting elites and creating collusion in subordinates through a practice of learned helplessness. Power is internalized and tends to be unseen and internalized. Power holders are generally unaware of the changes in their perspectives and subalterns unaware of their subordination. Hierarchies do have efficiency benefits in certain circumstances, but they have costs in terms of the corruption of power. Complete elimination of hierarchy is impossible, but Blaug believes we can have less hierarchy and more democracy and still achieve organisational effectiveness. Transposing this general argument on the nature and abuse of power to the political arena, it is clear that democracy is necessary to have any possibility for achieving egalitarianism, and further, that the **progressive struggle** is for the extension of democracy to ever wider domains. Within the development community there is a common tendency to present democracy in terms of its instrumental value in facilitating economic development. There is significant evidence – albeit contested – that democracy facilitates economic growth (Olson, 1993; Siegle et al., 2004; UNDP, 2002). Those who dispute this relationship normally argue not that democracy reduces economic growth but that there is no clear relationship between the two, or that democracy only benefits certain parts of the population such as the middle class (Ross, 2006). Further, there is significant evidence that democracy improves outcomes for measures of human development when controlled for factors such as per capita income, in a wide range of domains including overall population longevity, reduced child mortality, improved nutrition, better child welfare, and improved educational attainment (Harding and Wantchekon, 2010). The logic of the mutually supportive relationship between democracy and development is presented below: However, a stronger argument in favour of democracy is that it is an indissoluble part of development, a perspective made famous by Amartya Sen (1999). Indeed, Sen turns the democracy development debate inside out in arguing that without political rights we cannot define what development means for us and therefore determine our own economic needs: "Political rights, including freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves." (Sen, 1999: 154) An important consideration in justifying support to democracy promotion is the perspective of citizens. Numerous surveys have been carried out on public attitudes to democracy, with results that are surprisingly consistent across regions. **A great majority** of the population, whether living in democracies or under dictatorship, **support democratic governance**, notwithstanding frequently expressed disappointment in the actual performance of democracies (Shin and Tusalem, 2007). In this section we have considered the merits of democracy from a critical or Leftist perspective. The preference of democratic transformation over revolutionary change is argued on the grounds of the necessity of securing consent through broad legitimacy in complex contemporary societies. From an instrumental point of view, violent overthrow is an unlikely vehicle for improving social equity because by definition the tools of violence are primarily controlled by elites. It is preferable to promote and insist upon non‐violent debate, which does not require a naïve presumption that consensus can be achieved. The work of Ricardo Blaug is helpful in explaining why **authoritarian orders of either the Right or Left are unlikely ultimately to benefit the majority of the population**. Hierarchical power leads to a type of madness in which leaders lose touch with the needs of the subaltern, and the subaltern in turn tends to become dependent on the Leader. The result will be political decisions consistently benefiting the elite over the masses, with a diminished capacity of subalterns to understand and combat their own repression. This psychological explanation is buttressed with empirical evidence showing improved human development outcomes for democracy, explained by Sen as others as deriving from the necessity of freedom to identify and strive for the realisation of economic needs. Finally, and importantly, a considerable majority of the population, whether living in democracies or dictatorships, consistently supports democracy over authoritarianism.

#### Warming’s not existential---framing it as such undermines solvency.

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

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

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

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

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

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

Plan for progress

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

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

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

## Innovation DA

#### Their uniqueness arg is about mergers---that’s thumped.

Joseph Miller 21. Co-chair, Mintz Antitrust Practice. “More Antitrust News, Still None of it Good.” *The National Law Review*. July 10th, 2021. <https://www.natlawreview.com/article/more-antitrust-news-still-none-it-good>.

In a joint press release, the FTC and Antitrust Division announced they are launching a review of the Merger Guidelines so the agencies "review mergers with the skepticism the law demands" in order to "determine if they are too permissive." Richard Powers, the Acting Assistant Attorney General for Antitrust is a criminal lawyer by background and has no significant merger experience so it's fair to assume this initiative is being promoted by FTC Chair Lina Khan.

Merger Guidelines are often cited by courts for their persuasive authority but do not carry the force of law. They are influential because they reflect a fair view of current economic learning, reduced to an administrable set of principles to guide agency merger staffs and businesses alike. The current horizontal merger guidelines were published in 2010 so perhaps it is time for an update. What we see in the press release, however, is a strong signal that the agencies will not incorporate the latest economic literature, but rather take a hyper-aggressive enforcement posture based on a literal reading of a very old statute.

Merger guidelines will need to be backed by sound law and economics in order to persuade the federal courts. If this initiative reflects nothing more than ideologically driven hostility towards efficient transactions we will see a burst of enforcement activity, followed by legal sophistry about textualism, Brown Shoe, Von's, and other bad but not explicitly overturned precedent, followed by a well-deserved thrashing in the courts of appeal.

I guess antitrust lawyers should settle in for the best of times/worst of times period, lots of activity but also hard for counselors and clients to plan transactions if enforcement decisions are untethered to the consumer welfare standard, without which enforcement decisions will necessarily be driven by broader policy goals or raw political calculations. I may be reading too much into a short press release and I hope I'm wrong about how bad this will get in the short term. I'm also grateful that the FTC has staggered terms for commissioners so Christine Wilson and Noah Feldman can continue to articulate sound, traditional enforcement principles, and priorities.

#### Biden order thumps---signals future legislation and faces GOP opposition.

Jeff Stein, Aaron Gregg & Cat Zakrzewski 21. Political and Economics Reporter for *The Washington Post*. Business Reporter for *The Washington Post* (and Emory alum!). Technology Policy Reporter for *The Washington Post*. “Biden’s bid to take on big business sets off battle over who holds power in U.S. economy.” *The Washington Post*. June 9th, 2021. <https://www.washingtonpost.com/business/2021/07/09/biden-executive-order-promoting-competition/>.

The FTC probably can limit noncompetes only “on the margins,” diminishing its effectiveness, but Biden’s support bolsters bipartisan legislation on the matter currently moving through Congress, said John Lettieri, president of the Economic Innovation Group, a bipartisan public policy organization. “This is just a first step,” Lettieri said.

An issue once confined to the liberal fringe, antitrust policy has entered the center of political life and played a major role in the 2020 Democratic presidential contest amid increasing concerns about the political and economic clout of a handful of private actors.

Biden calls for efforts to lower drug prices as part of executive order to foster competition

The White House’s executive order states that 75 percent of U.S. industries are more consolidated than they were 20 years ago. That, officials say, has helped triple prices for many household necessities, while making it harder for workers to bargain against competing employers for better wages and benefits.

A growing body of evidence has pointed to corporate consolidation as a culprit in persistently stagnant wages and the decline of the American middle class. A 2018 study in the Harvard Law Review found that median compensation for workers would be as much as $10,000 higher if markets were less concentrated. A University of Chicago paper in 2016 found that the decline in workers’ share of corporate income is largely tied to increasing corporate consolidation.

“This represents a massive change in how mainstream Democrats are thinking about the economy. It identifies concentrated corporate power — something both parties previously encouraged — as actually contributing to a broad range of harms for workers, innovation, prosperity, and a resilient democracy overall,” said Sarah Miller, executive director of the American Economic Liberties Project, which supports antitrust efforts.

“This is not a Warren or a Sanders administration, but they have fully embraced the need to take on concentrated corporate power across the economy.”

Conservatives are likely to blast the measure as ineffective and excessive government intervention into private markets. Doug Holtz-Eakin, a Republican budget expert, said the executive order was “all over the place” — pointing to the wide discrepancy of impact between incremental measures, such as limiting excessive broadband fees, and massive changes like unwinding prior corporate mergers.

“There’s a presumption of lack of competition but no evidence of it, and we’re going to do something on the presumption — which is not a great way to do business,” Holtz-Eakin said. “They provide no evidence this is going to change quality of competition.”

The Biden administration brought in experts with ties to the liberal wing of the party to help spearheaded the order, including Bharat Ramamurti, deputy director of the White House National Economic Council; Tim Wu, an NEC antitrust advocate; and Hannah Garden-Monheit, a senior policy adviser for the council.

Ramamurti was a senior aide to Sen. Elizabeth Warren (D-Mass.) while Wu is a longtime critic of Big Tech at Columbia University. NEC Director Brian Deese also was closely involved in the process.

Conservative groups mount opposition to increase in IRS budget, threatening White House infrastructure plan

Business groups are likely to oppose sweeping regulations that emerge from this order. But any new regulations are likely to be ironed out within each specific implementing agency, giving the affected industries time to provide their input.

Neil Bradley, chief policy officer for the U.S. Chamber of Commerce, accused Biden of taking a “government-knows-best approach” with the order. He noted that both large and small businesses are needed for the economy to thrive, and said the business lobby opposes “centralized government dictates” to plan the economy.

#### No link---the tech labor market is already competitive.

Brittany Meiling, 7-31-21. San Diego Union-Tribune. "Employers bow to tech workers in hottest job market since the dot-com era". Los Angeles Times. 7-31-2021. https://www.latimes.com/business/story/2021-07-31/employers-bow-down-to-tech-workers-in-hottest-job-market

There’s an air of desperation among tech employers this summer. Software talent, it seems, is in such high demand that companies are morphing how they hire. And workers are the ones with the power. Good and experienced tech workers are being treated like celebrities — hounded by recruiters, courted by managers, and bestowed a bevy of options before choosing their next boss. “It makes you feel like you’re amazing, when really ... you’re just another software engineer that’s looking for a job,” said Henry Chesnutt, who just moved back to San Diego from San Francisco to work at the rapidly growing tech startup Flock Freight. The job outlook for workers like Chesnutt has been good for much of the last decade. But now, a multitude of factors are driving competition for talent to a level not seen in nearly 20 years, some recruiters say. “This is the most competitive market I can remember in my professional career, with many people comparing it to the dot-com market of the late ‘90s,” said Jim Bartolomea, vice president of global talent at tech titan ServiceNow, which employs a huge chunk of the software talent in San Diego. Last month, employers posted more than 365,000 job openings for IT workers, the highest monthly total since September 2019, according to IT trade group CompTIA. The positions highest in demand include software developers, IT support specialists, systems engineers and architects. [There’s no labor shortage — just not enough good jobs](https://www.latimes.com/business/story/2021-07-02/labor-shortage-is-workers-crisis-as-covid-economy-recovers) Employers in California and the U.S. are scrambling to fill jobs as the dust from the pandemic begins to settle. Just don’t call it a labor shortage. The demand has been attributed to all sorts of things. During the pandemic, businesses that had been slow to adopt enterprise software began rapidly catching up. A tidal wave of productivity software, conferencing and collaboration tools, and e-commerce tech flooded the world. The same was true for consumer tech, with video game development, entertainment tech and social platforms booming. Many of these jobs are going unfilled, as competition for new hires ramps up. Simultaneously, remote work became the status quo in the tech industry. Suddenly, software talent could pick and choose from a massive pool of job opportunities. All while existing talent is beginning to stray. Roughly a third of more than 2,800 IT professionals said they plan to look for a new job in the next few months, according to a recent Robert Half International survey. Aaron Bartholomew, a lead backend developer at tech company Trust & Will, just went through a two-month job search in which he held the power in the employer-worker exchange. “I realized pretty quick that I was the one with the upper hand,” Bartholomew said. “All these companies were moving incredibly fast to try and close on me.” Software interviews have a reputation for being slow, painful processes that involve tests of logic, design and computer science knowledge. Years ago, Chesnutt was tested for five straight hours on algorithms during an interview with YouTube. But now, these technical interviews are often being waived, said Chesnutt and Bartholomew, who both experienced this step dropped for the sake of urgency. Recruiters are increasingly using what Chesnutt sees as pressure tactics, such as “exploding offers,” which are job offers that self-detonate at a set date and time if engineers don’t accept them soon enough. “They’ll try to rush you through the process as soon as possible, and get you to sign that day while they’re on the phone with you,” Chesnutt said. Brett Wayne, a tech recruiter and managing director at Cypress, said the competitive pressure is unlike anything he’s seen in his 13-year career in recruiting. He likened it to what’s happening in the real estate market. Just like a hot property with multiple bids, Chesnutt ended his job hunt with four employment offers. To win a bid on a quality engineer, companies are offering things such as flexible hours, sign-on bonuses and permanent remote work, the last of which has become a requirement for much of the workforce. Dice, a website and staffing firm that focuses on tech talent, published [a report in June](https://www.dice.com/media/dice-press-releases/6-15-21-dice-report-shows-technologists-desire-flexible-structure-over-full-time-remote-work.html) that found only 17% of technologists wanted to work in an office full time, while 59% wanted remote and hybrid approaches. [‘Work from anywhere’ is here to stay. How will it change our workplaces?](https://www.latimes.com/business/technology/story/2020-11-12/companies-will-allow-employees-to-work-wherever-they-want) Working from home will become the norm for many employees even after the pandemic ends. But prepare for a pay cut. Wayne said he’s observed companies shoot themselves in the foot by not offering remote options, making an already slim candidate pool even slimmer. “If it was hard to hire talent 18 months ago — and now you cut the group you’re going for in half — it’s going to be really tough for you,” Wayne said. Bartholomew said he’s watched a great migration of developers out of urban areas, riding remote work out of San Diego or other cities. “Literally about 50% of my peer group has moved,” Bartholomew said. “Companies that adapt will get the majority of the talent pool.” It’s not strict remote work, however, that seems to be appealing to the majority of engineers, according to the Dice report. It’s more about flexibility to choose. “While many technologists would still prefer to work 100% remotely, there is an equal desire for a hybrid approach, and we’ve actually seen fewer remote days per week become more desirable over the past year,” Art Zeile, CEO chief executive of Dice, said in a statement. “The companies who succeed in attracting and retaining top talent will be those who take the time to build an agile approach that gives technologists flexibility and control over their work environment.” U.S. tech salaries are also on the rise. A recent [Dice report](https://techhub.dice.com/Dice-2021-Tech-Salary-Report.html) found tech jobs saw an average salary increase of 3.6% between late 2019 and late 2020. That might not sound like much, but it’s a significant jump compared with 2017, 2018 and 2019, when annual increases were less than 1%. U.S. employers across all industries — not just tech — reported their strongest hiring outlook since 2000, according to an [employment outlook survey](https://www2.staffingindustry.com/site/Editorial/Daily-News/US-hiring-plans-in-Q3-highest-since-2000-ManpowerGroup-57966) published by staffing giant ManpowerGroup in June. “It’s a worker’s market, and employees are acting like consumers in how they are consuming work — seeking flexibility, competitive pay and fast decisions,” Becky Frankiewicz, ManpowerGroup president for North America, said in a statement. “Now is the time for employers to get creative to attract talent — and to hold onto the workers they have with both hands.”

#### But the aff is a link turn---tech consolidation undermines global competitiveness.

Ganesh Sitaraman, 20. Chancellor Faculty Fellow and Professor of Law at Vanderbilt Law School and Director of its Program in Law and Government. "The National Security Case for Breaking Up Big Tech". Knight First Amendment Institute at Columbia University. 1-30-20. https://knightcolumbia.org/content/the-national-security-case-for-breaking-up-big-tech

Big Tech and the Defense Industrial Base Concentration in the tech sector also threatens the defense industrial base due to higher costs, lower quality, less innovation, and even corruption and fraud.71 Each of these dynamics has already been a problem for America’s over-consolidated defense industrial base. As technology becomes more and more central to defense and national security, it is likely that these same dynamics will replicate themselves with big tech companies. This will become a national security threat, both directly, in terms of the quality and speed of procurement, and indirectly, by reducing innovation and functionally redirecting defense budgets from research spending to higher monopoly profits.72 Conventional economic theory suggests that monopolists have the ability to increase prices and reduce quality because consumers are captive.73 When it comes to defense spending, the Government Accountability Office commented in 2019 that “competition is the cornerstone of a sound acquisition process and a critical tool for achieving the best return on investment for taxpayers.”74 At the same time, the GAO observed that “portfolio-wide cost growth has occurred in an environment where awards are often made without full and open competition.”75 Indeed, it found that 67 percent of 183 major weapons systems contracts had no competition and almost half of contracts went to a handful of firms. Of course, consolidation also means that the Defense Department is in a symbiotic relationship with these big contractors. Some startup executives wanting to sell to the government thus see the Pentagon as “a bad customer, one that is heavily skewed in favor of larger, traditional players,” and they don’t feel like they can break into the sector.76 Standard stories about political economy and capture also suggest that these firms will have outsized power over government.77 As Frank Kendall, the former head of acquisitions at the Pentagon, has said, “With size comes power, and the department’s experience with large defense contractors is that they are not hesitant to use this power for corporate advantage.”78 In the defense context, that means monopolists retain power (and profits), even if they overcharge taxpayers and risk the safety of military personnel in the field. In an important article in The American Conservative on concentration in the defense sector, researchers Matt Stoller and Lucas Kunce argue that contractors with de facto monopoly at the heart of their business models threaten national security. They write that one such contractor, TransDigm, buys up companies that supply the government with rare but essential airline parts and then hike up the prices, effectively holding the government “hostage.”79 They also point to L3, a defense contractor that had ambitions to be a “Home Depot” for the Pentagon, as its former CEO put it. L3’s de facto monopoly over certain products, according to Stoller and Kunce, means that it continues to receive lucrative government contracts, even after admitting in 2015 that it knowingly supplied defective weapons sights to U.S. forces.80 Consolidation also threatens U.S. defense capacity. The decline of competition,

according to a 2019 Pentagon report, leaves the military vulnerable to “sole source suppliers, capacity shortfalls, a lack of competition, a lack of workforce skills, and unstable demand.”81 With a limited number of producers, there is less talent and knowhow available in the country if there is a need to build capacity rapidly.82 In 2018, the Defense Department released a report on vulnerable items in the military supply chain, including numerous items in which only one or two domestic companies (and, in some cases, zero domestic companies) produced the essential goods.83 How did the United States lose so much of its industrial base? The combination of consolidation and global integration is part of the story. As Stoller and Kunce argue, companies consolidated in the 1980s and 1990s while shifting emphasis from production and R&D to Wall Street-demanded profits. Globalization then allowed them to shift production overseas at a lower cost. The result was to gut America’s domestic industrial base—and, in many cases, to shift it to China, which engaged in a decades-long strategic plan to develop its own industrial base. The result, in the words of the 2018 Defense Department report, is that “China is the single or sole supplier for a number of specialty chemicals used in munitions and missiles.” In other areas too, the risks of losing access to critical resources are real. Describing the problem of limited carbon fiber sources, the same Pentagon report notes, “[a] sudden and catastrophic loss of supply would disrupt DoD missile, satellite, space launch, and other defense manufacturing programs. In many cases, there are no substitutes readily available.”84 As technology becomes more integral to the future of national security, it is hard to see how big tech will not simply go the way of the big defense contractors. Corporate mottos not to “be evil” are long gone,85 and big tech companies spend millions on conventional Washington, D.C., lobbying efforts.86 Over time, as contracts move to tech behemoths, there will no longer be competitive alternatives, and the Pentagon will likely be locked into relationships with big tech companies—just as they currently are with big defense contractors.87 Some commentators suggest that robust antitrust policies are a problem because only a small number of tech companies can contract for defense projects.88 But there is another way to look at it: The goal should be to encourage competition in the tech sector so that there are multiple contractors available. As former secretary of homeland security Michael Chertoff has said, defending the antitrust case against Qualcomm, “a single-source national champion creates an unacceptable risk to American security—artificially concentrating vulnerability in a single point. … We need competition and multiple providers, not a potentially vulnerable technological monoculture.”89 The consequence of consolidation in tech is that taxpayers will likely see higher bills even as innovation slows due to reduced competition. Worse still, every taxpayer dollar that goes to monopoly profits—whether in the form of higher prices or fraud and corruption—is a dollar that is not going toward innovation for the future. A concentrated defense sector means not only less innovation due to the lack of competition in the sector; it means that funding that could have been available for innovation instead gets redirected via monopoly profits to the pockets of big tech executives and shareholders. Conclusion It is perfectly understandable why big tech companies don’t want to be broken up or regulated. They are profitable, growing, and powerful. It is also perfectly understandable why they deploy national security arguments to defend against the prospect. National security arguments have long been a trump card in law, policy, and politics, forming an exception to the normal rules that govern the economy.90 But if we take seriously national security imperatives in a time of great power competition, the case for shielding big tech from competition is surprisingly weak. Tech companies are not competing with China so much as integrating with China, and their integration comes with threats to the United States. The best route to broad and transformative innovation is competition coupled with public spending on R&D–not concentration into monopolies. Rather than threatening national security, breaking up big tech will help bolster it.

#### Big-tech companies aren’t key.

Ganesh Sitaraman 20. Professor. “The National Security Case for Breaking Up Big Tech” Vanderbilt University Law School. 2020. <https://poseidon01.ssrn.com/delivery.php?ID=663088101094067111125109085097113006019074041037048078090069008097017004119004010122107117023039103016043127077017079016077008031015032054022020121019008102008007010086011000024110101003093009026125020004074123005019020029106079113089098073024122005&EXT=pdf&INDEX=TRUE>

Some might argue that robotics, AI, and quantum computing are so resource-intensive that an ecosystem of smaller companies engaged in fierce competition would mean that no company would have the resources available to invest in those next-generation technologies. There are a few responses to this argument. First, it is not clear that breaking up and regulating big tech would **prevent those firms from having the considerable resources** to develop the technologies of the future. Facebook would still have billions of users, even without Instagram and WhatsApp, for example. Amazon’s platform would still have enormous market power. Second, and more importantly, part of the answer is that the decision to break up and regulate tech companies should be accompanied by public investment in R&D. One of the primary arguments for the national champions view is that monopolists have the resources to be able to invest in innovation because they do not face competitive pressures.65 But any system of innovation operates against a backdrop of laws and public policy.66 The ability to capture the gains of innovation depends on intellectual property law. The possibility of winning government contracts for frontier projects that require innovation is determined by procurement policies. And, of course, an alternative to monopolist investment in R&D is public investment in R&D. These policy choices all shape the innovation ecosystem, and it is not at all obvious why society has to accept national champions instead of thinking about revising these laws and policies more broadly. Given the emphasis that proponents of national champions place on research and development, it is worth noting that historically, as Mariana Mazzucato has argued, **government** has been a significant driver of innovation through its research and development efforts.67 Today, one could easily imagine the **government spending considerable sums of money on R&D in artificial intelligence**, robotics, quantum computing, augmented and virtual reality, and other technological research. Public investment in research has a **variety of benefits**. First, because it is not tied to the profit motive and business model of a single company, it **covers a wider range of subjects**, leading potentially to innovations that would otherwise go undiscovered. Public investment extends to basic research that does not have immediate or foreseeable commercial appli- cations. It could also include research into areas that might challenge the incumbency and business models of existing companies. Second, and relatedly, public investment into research is less likely to be geared toward improving surveillance capacity. As long as the **biggest companies have surveillance, personalized targeting, and behavioral response at the heart of their business models,** research and innovation within those companies will likely **be geared, in no trivial part, toward improving those activities**. A digital authoritarian country might see that as a valuable public goal, but it is not at all clear why a free and democratic society should. Public-sponsored research might instead be directed toward a variety of socially beneficial uses other than continual improvement of individual monitoring and behavioral reactions. Nota- bly, as there are more opportunities in research outside of the big tech companies, many talented people might choose to work on a wider range of problems. Third, public investment in R&D has the potential to spread the bene- fits of technology, innovation, and industry throughout the country. At present, much of the country’s technological and intellectual prowess is concentrated in a few regions, the most prominent being northern Cali- fornia, Seattle, and Boston. **Geographic inequality has a variety of negative consequences**—economic, social, and political.68 But, as economists Jonathan Gruber and Simon Johnson show in their book Jump-Starting America, there is no reason that public investment couldn’t spur suc- cessful economies in dozens of mid-sized cities all over the country, with spillover benefits for their regions.69 Unlike government action, technol- ogy companies have no reason to develop the capacities of all regions of the country. Amazon’s so-called competition for its second headquarters is a good example. After much public attention, the company settled on New York City and a suburb of Washington, D.C., two superstar cities. Artificial intelligence, of course, requires considerable data in order to improve precision and accuracy. One of the arguments for big tech is that such companies alone are able to collect this data and use it. But there is **no reason why this has to be the case either**. Consider two alternate possibilities. First, the United States could create a **public data commons** that would be highly regulated to protect privacy. The public data commons would include publicly available data from a variety of govern- ment sources, and qualifying businesses, local governments, or nonprof- its could train their machines using this data. Any new data they collect from users could then be fed back into the data commons (de-identified), so that the data commons improves in quality and quantity of data over time.70 Second, we could imagine requiring big tech companies to make their data available in interoperable formats. If these companies effectively have a monopoly power over data, then they could be regulated as monopolies—and one condition of their continued protection as monopolies could be **enabling access to the datasets**. Again, there is no legal or regulatory reason why these kinds of policy options are impossible. And in either case, they would **enable a larger number of players to innovate than does the status-quo**, stand-pat approach to protecting big tech from competition.

#### No U.S.-China war.

Abraham Denmark et al 20 is director of the Asia Program at the Woodrow Wilson International Center for Scholars and a former deputy assistant secretary of defense for East Asia, April 16, “SAME AS IT EVER WAS: CHINA’S PANDEMIC OPPORTUNISM ON ITS PERIPHERY”, <https://warontherocks.com/2020/04/same-as-it-ever-was-chinas-pandemic-opportunism-on-its-periphery/>

While Washington and Beijing’s overheated rhetoric and mutual recriminations amid the ongoing coronavirus pandemic are grabbing headlines, equally important is what has been playing out across China’s eastern and southern peripheries over the past several weeks. At a moment when the Chinese Communist Party has been touting the generosity of its approach to COVID-19, there has been a marked increase in the number of incidents between China and its neighbors. Beijing has used its naval and paramilitary forces as well as its increasingly sophisticated information operations to ratchet up tensions, probe responses, and see how much it can get away with. This raises the question of what exactly China is up to. Has Beijing truly embraced a new approach of cooperation with its neighbors? Is it trying to take advantage of the COVID-19 mess to assert its interests more aggressively? Or is this simply an extension — albeit an opportunistic one — of its pre-pandemic strategy? BECOME A MEMBER The novel coronavirus pandemic has not curtailed geopolitics — in fact, it seems to be intensifying preexisting tensions. Understanding if and how China’s foreign policy has shifted is critical for assessing what is happening along China’s periphery and what Beijing might do next. Answering these questions is necessary for the United States and its allies to fashion a proper response. This, in turn, demands understanding what Beijing was doing before the crisis and thinking through what might actually signal a significant shift toward a more confrontational foreign policy. How Did I Get Here? China’s Latest Moves Chinese ships and aircraft have been involved in a spate of recent incidents across China’s maritime periphery. While there have been no fatalities, lives were certainly put at risk. Considering these incidents have involved two of China’s primary regional rivals — Japan and Vietnam — as well as Taiwan, the possibility that Beijing may see the COVID-19 pandemic as an opportunity to press an advantage during a time of geopolitical distraction and uncertainty should be considered. In mid-March, a group of People’s Liberation Army (PLA) aircraft crossed the median line in the Taiwan Strait — an unofficial demarcation line between Taiwan and China — in an exercise intended to intimidate Taiwan by demonstrating China’s ability to conduct operations at night while also testing Taiwan’s ability to react. While PLA ships and aircraft have been operating within the vicinity of Taiwan for several years, the pace and assertiveness of these activities have noticeably increased in recent years: The latest incident was the fourth time in two months that PLA aircraft forced Taiwan’s air force to scramble and intercept. Considering the impending second inauguration of Taiwan’s leader, President Tsai Ing-wen, as well as dwindling levels of support in Taiwan for Beijing’s “One Country, Two Systems” formulation, these exercises are likely to grow even more common and assertive. In late March in the East China Sea, a Chinese fishing vessel collided with a Japanese destroyer. The collision ripped a hole in the destroyer, but the ship was able to move on its own, and its crew suffered no casualties. Beijing announced that one Chinese fisherman had been hurt and blamed the Japanese vessel for the incident, calling for Japan’s cooperation to prevent future incidents. It is unclear if the Chinese vessel was a part of China’s “maritime militia,” described by the U.S. Department of Defense as “an armed reserve force of civilians available for mobilization” that plays a “major role in coercive activities to achieve China’s political goals without fighting.” The South China Sea has also seen several recent incidents involving Chinese vessels. In early March, a Vietnamese fishing vessel was moored near a small island in the Paracel archipelago — islands claimed by both Vietnam and China, among others — when a Chinese vessel chased it and fired a water cannon, causing the boat to sink after hitting some rocks. The crew was rescued by another Vietnamese fishing boat, with Hanoi claiming that the fishing boat was rammed by the Chinese vessel. The U.S. State Department issued a statement in early April expressing its serious concerns about the incident and calling on China “to remain focused on supporting international efforts to combat the global pandemic, and to stop exploiting the distraction or vulnerability of other states to expand its unlawful claims in the South China Sea.” The State Department also noted that since the outbreak of the pandemic, “Beijing has also announced new ‘research stations’ on military bases it built on Fiery Cross Reef and Subi Reef, and landed special military aircraft on Fiery Cross Reef.” Most recently, a Chinese coast guard (CCG) ship — one of several Chinese ships that harassed a Philippine commercial vessel in September 2019 — was seen patrolling near the Scarborough Shoal, representing one of many CCG ships that have been patrolling nearly all of the disputed areas between China and the Philippines in the South China Sea. Are these incidents merely a coincidence? Are they a sign that Beijing is distracted by COVID-19 and the resulting historic economic slowdown, and aggressive local commanders are pushing the envelope of their own accord? Or is this merely the result of China fielding more ships and more aircraft, leading to a predictable increase in incidents and exercises? While these explanations are all plausible, a more likely driver of China’s actions is, in fact, continuity. These incidents are not unprecedented and likely do not indicate a new, post-pandemic Chinese strategy. Rather, these incidents are consistent with a Chinese approach to foreign affairs under CCP General Secretary Xi Jinping’s leadership that even before the outbreak of COVID-19 demonstrated flexibility, assertiveness, and a singular desire to exploit opportunities of external weakness and distraction in order to advance China’s interests. For more than a decade, Chinese leaders have come to see their external security environment as generally favorable, representing a “strategic window of opportunity” in which China could achieve its primary objective of national revitalization through economic and social development, military modernization, and the expansion of its regional and global influence. Since the 2008 to 2009 global financial crisis, Beijing has perceived an opportunity to expand its geopolitical power relative to the United States yet does not seek an explicit conflict with the United States or its allies. As a result, Beijing has intensified its use of “gray zone” tactics that seek to gradually advance Chinese interests using ambiguity and tactics that are tailored to not provoke a military retaliation. These activities also serve as “probing behavior” that tests how far China can go before encountering determined resistance. In recent years, Beijing has used this approach to increase pressure on Japan in the East China Sea and advance Beijing’s territorial claims in the South China Sea against the Philippines, Vietnam, Malaysia, and Indonesia. Throughout, Beijing’s approach to regional geopolitics has been adaptive to specific conditions, flexible to broader strategic trends, and opportunistic to perceptions of weakness or distraction in its adversaries. Chinese actions are not the reckless gambles they may initially appear to be. Rather, they are premeditated probes seeking to identify weakness and opportunity. Chinese pressure is carefully calibrated to fit, but not necessarily to exceed, a given situation. This approach reflects a maxim of Vladimir Lenin, whom the Chinese Communist Party continues to revere to this day: “Probe with a bayonet: if you meet steel, stop. If you meet mush, then push.” In multiple instances, Beijing has continued to push when it perceives that its actions are unlikely to cause a significant response. But when Chinese assertiveness has been met with resolute counterpressure, Beijing’s response has not been predictably escalatory.

Beijing has demonstrated flexibility when confronted with determined opposition. Examples include Japan’s response to China’s rollout of an air defense identification zone in the East China Sea in 2013 and President Obama’s reported drawing of a red line around Scarborough Shoal to Xi Jinping in March 2016. Moreover, India’s response to Chinese activities in Doklam did not lead to war.

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#### Financial stability is improving. Ignore fear mongering.

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There are good news: near-term financial stability risks are lower, driven by a decline in macroeconomic and emerging market risks.

As outlined in the IMF’s most recent World Economic Outlook, the upswing in global activity has gained further steam, with global growth projected to rise to 3.6 percent in 2017 and 3.7 percent in 2018—in both cases 0.1 percentage point above our previous forecasts, and well above the global growth rate of 3.2 percent in 2016. This is laying hopes for a sustained recovery and should allow for the eventual normalization of monetary policies.

The core of the global financial system is stronger. Systemically important banks and insurers continue to enhance their resilience by raising capital and liquidity, addressing legacy issues, and adapting their business models to the evolving regulatory and market environment.

In emerging markets, capital flows are rebounding, driven in part by stronger fundamentals. Portfolio inflows to emerging market economies are on track to reach $285 billion in 2017, more than twice the total over the past two years. The cost of financing is low, and their currencies and equity prices have strongly appreciated this year.

Globally, supportive monetary and financial conditions and buoyant financial markets have helped foster growth and repair balance sheets.

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

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

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

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

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

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

The choice before us is techno-optimism or barbarism.

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

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

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

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

The preconditions for green industrialization can be made in America.

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

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

#### Decoupling is possible---here’s more empirics.

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We can see the first major error of the degrowth concept if we turn our attention to past environmental challenges that we have actually overcome. The evidence is clear that it is planning—typically regulation, but also via public-sector infrastructure spending and industrial policy—not reduction in economic growth, that was responsible for these victories.

It is worth remembering that we have solved a fair few ecological problems, from acid rain over the Great Lakes to air and water quality in many Western nations. Until the 1980s, sulphur dioxide pollution was tied tightly to economic growth in the OECD club of wealthier nations, but it is no longer. Not enough ecological problems have been solved to be sure, but we need to investigate where there has been success—largely thanks to the struggles of trade unions, impacted communities, and environmental groups—in order to learn the lessons of what works.

Where there has been subsequent deterioration after achieving such successes—such as the scandalously still-unresolved lead contamination of water in Flint, Michigan—this has been the result of neoliberal retreat from non-market intervention: privatisation, deregulation, regulatory capture, and underfunding or outsourcing of inspection. In the case of Flint, we can add to this list the neoliberal era's neglect of water infrastructure, particularly with respect to that servicing less-profitable minority and poor communities. Likewise, neoliberal racism that resulted in infrastructural breakdown and underconsumption of water resources by poor and racialised neighbourhoods was responsible for the water crisis in Cape Town, not overconsumption.

But perhaps the greatest environmental victory yet has been the healing of the ozone layer. In the 1980s, depletion of atmospheric ozone, particularly around the poles, was that era's version of existential ecological crisis. It was also no less threatening to humanity over the near term than climate change via an increase in skin cancer and immune deficiency disorders as well as negative impacts on terrestrial and near-surface aquatic food webs and biochemical cycles, and reduction in agricultural yields. And the cause was also anthropgenic [sic] emissions: this time primarily chlorofluorocarbons (CFCs) that were popularly understood, roughly correctly, as being used in refrigerators and aerosol sprays.

Since the 1987 Montreal Protocol ban on ozone-depleting substances, including CFCs, such emissions have declined by 98 percent (there has however been an uptick in unreported emissions since early this decade from east Asia, suggesting someone in the region is cheating). Ozone depletion reversed by the 2000s and full recovery is expected by 2075.

Having grown up in the 80s, I remember at the time bugging my mum to stop buying cans of hair spray. She did not follow my advice.

Thankfully my advice was not taken by policymakers either. Instead, the Montreal Protocol regulatorily intervened in the market against and over the wails and lobbying efforts of the industries affected.

Had we embraced degrowth with respect to ozone depletion by attempting to arrest growth in, say, the number of fridges in the world—or even reduce the total number—instead of regulation to enforce technology-switching, disaster would have befallen us. Saying "this many fridges and no more" would only have arrested the growth in emissions, not emissions tout court. (For the same reason today, it is not enough to keep greenhouse gas emissions steady, but eliminate them)

It simply would not have worked in any case, as by what right can developed nations tell the global south that they cannot keep their food fresh while they continue to do so? (Indeed, one might say that the socialist argument is instead: There still are not enough fridges in the world.)

Today there are more cans of hair spray and more fridges than ever before. The latter not least in the developing world, where refrigeration enhances quality of life through expansion of the range of food available, reducing food contamination, and improving nutrition. It also reduces food waste and therefore greenhouse gas emissions.

There has been an absolute decoupling of growth in the technologies that historically used ozone-depleting substances from growth in ozone depletion. The degrowth position maintains that absolute decoupling of growth from negative environmental impact is impossible, and that only relative decoupling—or reduced resource use per unit of production but increased production overall—is possible, but the story of ozone depletion shows this belief to be false. Economic growth has been absolutely, not relatively, decoupled from ozone depletion.

There are many, many other examples. Europe’s forests have grown by a third over the last century. Timber was used in almost every economic sector around 1900—for fuel, for furniture, house construction, even metal production—meaning that there was little forested areas left on the continent. But technological innovation in agriculture such as motorization, better drainage and irrigation reduced cropland as less area was needed to produce the same volume of food. In addition, there was a mass migration away from rural areas to the cities and, crucially, states after World War Two invested heavily in reforestation. Indeed, once a nation reaches a certain per capital income threshold, net deforestation ceases. Globally, tree cover has increased over the last 35 years.

Across the Atlantic, there were more dairy cows in the United States in 1870 than today, when the country has roughly ten times the population, according to the US Department of Agriculture. US crop production has increased even as agricultural inputs such as fertilizer, water and crop acreage have declined or plateaued, with the decline in fertilizer use being particularly sharp. Corn acreage has been absolutely decoupled from corn production. American potato yields continue to increase but the potato market is saturated, so potato production has plateaued, meaning that land is removed from production. Across the agricultural sector, this has meant an area of farmland the size of Washington State has been returned to nature, according to a forthcoming analysis by MIT business scholar Andrew McAfee.

McAfee also notes how US consumption of metals marched in lock-step with GDP until about the 1980s. Since then, consumption of important metals such as aluminium, nickel, copper, steel and gold have plateaued or declined. This takes into account imports and exports, so globalization is not the reason for this.

One important paper from degrowth advocates argues that this is simply because traded goods have a greater material impact than merely what is incorporated into them (think of the difference between an ingot of steel versus raw iron ore). Once this is taken into account, suggests another paper by a leading degrowth advocate, OECD absolute decoupling reveals itself to be a mirage, and globally economic growth remains as coupled to use of materials as ever—although, interestingly, that same paper notes this is primarily a result of offshoring of just construction materials.

But this is a global consideration of material inputs, so a range of sectoral absolute decouplings goes unnoticed, and global ones that are immaterial are likewise ignored. CFC absolute decoupling is global but unrecognized because measurement of material inputs doesn’t capture this. The sharp reduction in emissions of carbon monoxide, sulphur dioxide, nitrogen oxides, lead and particulate in Europe and America has come from regulation; they have not shifted overseas. US agricultural absolute decoupling has likewise not been a product of offshoring, as inputs here are primarily domestically sourced. A global decoupling of greenhouse gas emissions from growth (in principle feasible, but very far from being implemented) likewise would be missed by such an analysis.

And even more importantly, the very fact that there has already been a great many demonstrable examples of regional and global absolute decoupling in different sectors disproves the claim of the impossibility of absolute decoupling. The only question that remains is whether absolute decoupling can be extended across all sectors, or sufficient sectors as to eliminate undermining of ecosystem services.

Where free-market champions of absolute decoupling like McAfee are wrong however is their explanation for why it happens. McAfee believes it is vicious capitalist competition that drives technological innovation to reduce the costs of inputs. He concedes that some regulation is necessary, but fundamentally it’s market pressures that produce this of their own accord.

It is of course great when there is a happy coincidence of profitability and reduction of ecological harm, but if ever there is a conflict between these two, it’s profitability that wins out. And the reality is that America’s Clean Air Act, Clean Water Act and similar regulations across industry—in the face of furious opposition from private companies—have been responsible for most of the major environmental advances in the US. And the story is similar elsewhere. Since 2005, emissions had absolutely decoupled from global beef production, primarily as a result of the Brazilian Workers’ Party’s crackdown on the razing of forest for agricultural production—a magnificent success story currently being disastrously undone by that country’s hard-right government of Jair Bolsonaro. Denmark, a world leader in nitrogen pollution management, has achieved a reduction in fertilizer use even as agricultural output has increased through a muscular state-led nitrogen strategy across the agricultural sector that involves stringent regulation, RD&D funding and infrastructural build-out.

One might also respond that technology-switching away from fossil fuels is a much more difficult task than switching away from CFCs or nitrogen recycling. And the response must be that this is certainly true, as this shift affects almost every sector of the economy. But difficult is not the same thing as impossible. Eight major economies—France, Norway, Sweden, Switzerland, Ontario, Quebec, British Columbia and Paraguay—have already either largely or all-but completely decarbonized their electricity grids even as they enjoy economic growth (all by depending primarily on nuclear and/or hydroelectricity). These are models for the world. Cleaning up transport, industry and the built environment will likewise need a muscular public-sector interventionist approach.

#### Growth creates political will.

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According to the scale effect, given the level of technology, more resources and inputs are employed to produce more commodities at the beginning of economic growth path. Hence, more energy resources and production will induce more waste and pollutant emissions, and the level of environmental quality will get worse (Torras and Boyce [11], Dinda [2], Prieur [12]). The structural effect states that the economy will have a structural transformation, and economic growth will affect environment positively along with continuation of growth. In other words, as national production grows the structure of economy changes, and the share of less polluting economic activities increases gradually. Besides, an economy experiences a transition from capital-intensive industrial sectors to service sector and reaches technology-intensive knowledge economy (the final stage of the structural change). Due to the fact that technology-intensive sectors utilize fewer natural sources, the impact of these sectors on environmental pollution will be less. The last channel of the growth process is the technological effect channel. Since a high-income economy can allocate more resources for research and development expenditures, the new technological processes will emerge. Thus, the country will replace old and dirty technologies with new and clean technologies, and environmental quality will deepen (Borghesi [13], Copelan and Taylor [14]). Consequently, environmental pollution initially increases and later decreases as a result of scale, structural and technological effect emerging along with growth path.

Some studies of EKC hypothesis consider income elasticity of clean environment demand (Beckerman [15], Selden and Song [16], McConnel [17], Panayotou [18], Carson et al. [19], Brock and Taylor [20]). Accordingly, the share of low-income people’s expenditures for food and basic necessities is higher than that of high-income societies’ expenditures for the same type of commodities (Engel’s Law). As income level and life standards rise in conjunction with economic growth, the societies’ demand for clean environment advances. Besides, societies make often pressure on policy makers to protect the environment through new regulations. One might argue that, because of these reasons, clean environment is a luxury commodity and the demand elasticity of clean environment is higher than unity (Dinda [2]).