# 1NC

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### T Prohibit---1NC

#### Prohibitions are distinct from remedies that only block the anticompetitive elements of a practice, rather than the practice itself.

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97. Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis.

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Violation: The plan only increases behavioral remedies that target anticompetitive aspects of the practice---topical affs must increase prohibitions on the practices themselves.

#### Vote neg for limits and ground---infinite behavioral remedies and no link uniqueness for offense.

### Cap K---1NC

#### Capitalism causes environmental extinction---depletion and waste crisis outpace technological gains.

Tony Smith 21. Professor emeritus of philosophy at Iowa State University. "The Deadly Metabolic Rift". https://againstthecurrent.org/atc211/the-deadly-metabolic-rift/

Monthly Review editor and University of Oregon professor of sociology John Bellamy Foster has written several books and numerous articles, beginning with Marx’s Ecology: Materialism and Nature (2000), exploring the relevance of classical Marxist thought to grasping today’s existential environmental crises. Co-author Brett Clark is professor of sociology and sustainability studies at the University of Utah.

A small subset of the authors’ main claims will be highlighted here.

(1) There is indeed “an existential crisis in the human relation to the earth.” (1) Over the last 10,000 years planetary conditions fluctuated within relatively narrow and stable boundaries. The entire history of settled human civilizations has unfolded in this “Holocene” period of our planet’s life.

This period has now concluded. In a number of areas crucially important to humanity, these boundaries have been (or are about to be) transgressed: climate change, ocean acidification, stratospheric ozone depletion, nitrogen and phosphorus cycles, global freshwater use, changes in land use, biodiversity loss, atmospheric aerosol loading, and chemical pollution. (244)

Human activity is the main causal factor explaining this development, leading earth scientists to refer to the new period as the “Anthropocene.”

The authors of an important study cited by Foster and Clark warn that if the upper-range of projections of global warming were to occur it “would severely challenge the viability of contemporary human societies.”(1) When we recall how little has been done to prevent increased global warming, and how y-it is only one of the numerous planetary transformations imposing comparable risks on human societies, talk of an “existential threat” is fully warranted.

(2) There is no “technological fix” for this existential crisis. The more intelligent representatives of capital do not deny that serious environmental challenges must be faced. For them, however, this is best done by working with capitalist markets and not against them.

A carbon tax on polluting firms would give companies a strong market incentive to lower their costs by using technologies requiring fewer carbon emissions. Having to purchase rights to release carbon into the atmosphere in carbon markets would supposedly have the same effect, in their view.

There are also calls for the state to support firms undertaking massive geoengineering projects, such as sending aerosols into the upper atmosphere to reflect away the sun’s rays before they increase the planet’s surface temperature. Another proposal is to install technologies capable of extracting and sequestering significant amounts of carbon from the atmosphere.

As Foster and Clark remind us, technological change in capitalism tends to develop “greener” technologies without any special spur. Over the course of the industrial revolution, for example, each succeeding generation of steam engines became “greener” over time, burning less coal per unit of output than the one before. The total amount of coal burned in England increased nonetheless. (245)

This “Jevons paradox” (named after the British political economist who first brought it to attention) is easily explained: the increase in the number of units produced overwhelmed the reduction of coal use per unit, leading to more coal being burned overall.

Is there any reason to think that introducing technologies “greener” than those employed today won’t have a similarly paradoxical result? Investors in the stock market, whose pricing of oil companies’ stocks assumes that the last drop of oil in the ground will be profitably extracted, do not seem to think so. (243-4)

Engineering Disaster

Regarding geoengineering projects, Foster and Clark repeat the warning of many scientists that such unprecedented technological experiments would almost surely have pernicious consequences as harmful as the harms they are supposed to alleviate. (278)

Further, their massive scale would leave few resources for other social needs. An infrastructure capable of handling annual throughput 70 percent larger than that handled currently by the global crude oil industry would be required, along with ridiculous quantities of water — 130 billion tons annually just to capture and store U.S. emissions. (280)

Far from being a step towards socialism (as some techno-utopians of the left hold), government funded geoengineering would simply solidify an environmental industrial complex alongside the military industrial complex, the pharmaceutical industrial complex, and other complexes of big capital. (281-2)

Finally, once again, climate change is only one way in which present environmental trends will soon “severely challenge the viability of contemporary human societies.” In all the other cases too the sorts of technologies that have been developed, and the ways they have been used, have been part of the story of how we got to the present “existential crisis.”

Unless we figure out why that has been the case and eliminate that reason, to think we will be saved by technologies is to indulge in fantasy.

(3) Capitalism is the fundamental cause of the existential crisis in the relation between humans and the earth. All living beings appropriate resources from their environment and all generate wastes back into their surroundings. For a species to successfully occupy an environmental niche, the rate at which it depletes resources from its ecosystem must correspond to the rate they are replenished, and the rate it generates wastes must be aligned with the rate wastes can be processed.

When the social forms of capitalism are in place, neither condition is met, creating the metabolic rift between human society and its environment.

Capitalist market societies are distinguished from other societies in that products generally take the form of commodities sold for a profit. Any capitalist producers who do not attempt to make as much profit as possible, as fast as possible, will find themselves losing market share to those who do, if not forced out of existence altogether.

Making as much profit as possible, as fast as possible, generally means producing and selling as many commodities as possible, as fast as possible. This accelerated temporality is in tension with the temporality of our environment; resources tend to be depleted at a faster rate than they can be replenished, and wastes generated at a faster rate than they can be processed.

From this standpoint the “Jevons Para­dox” is less a paradox than a general description of how capitalism works. Any environmental benefits from technologies using fewer natural resources or generating fewer wastes per unit of production necessarily tends to be overwhelmed by the increase in the number of commodities produced in response to the “Grow or die!” imperative so ruthlessly imposed by the demands of capital accumulation.

From Local to Global Destruction

In the early phases of capitalist development, environmental destruction was relatively localized. After a handful of centuries of global expansion, it has sucked in re­sources from the natural world and spewed out wastes on a global scale, creating a fundamental rift in the metabolic relationship between human beings and the earth that is our home.

#### Anti-trust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19 Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism.” Democracy @ Work. December 9th, 2019. https://www.democracyatwork.info/eu\_competition\_monopoly\_in\_capitalism.

Today I'm going to devote the program to something many of you have asked me to present, to talk about, to analyze, and that is the question of monopoly. It has to do with the assertions we hear often these days that somehow our capitalist system, here in the United States and beyond, is being negatively affected because monopolies have replaced or displaced competition. The idea here is if only we can get competition back, recreate a competitive capitalism, why then the problems we face will go away. Today's program is a design to show you how and why that is not the case, to think about these things in a different way from this nice story that capitalism is basically fine; it's just the monopoly form we have to get rid of so we get back to the competition which we're all supposed to believe is wonderful and presents us with no problems to solve. So let's go, and let's do it in a systematic way.

First, it is of course easier, faced with a declining capitalism, a capitalism that's all around us with its extreme inequalities, with its instabilities – here we are, trying to cope with the effects of the Great Crash of 2008, even while we anticipate the next downturn coming down the road soon – an economic system that has shown (that is, capitalism) that it is not respectful of the natural environment; it is not, as the words now go, sustainable in a reasonable way. Yeah, we're surrounded by problems of capitalism. So it's comforting in that situation to get the idea from somewhere that this really isn't a problem of capitalism as a system but rather the problem brought in somehow from the outside – monopoly – a situation in which competition among many companies gives way in some way we're not quite sure about to a domination by one or a small handful of companies. And so the argument goes, we don't have to be critical of capitalism; we don't have to think about an alternative system. No, no, we just have to deal with this little detail, the monopoly problem. And if we can deal with that, well, we'll get back to a competition, to a competitive capitalism that is good.

There are three big mistakes involved in this way of thinking, which is nonetheless very widespread and very popular, more so now than in quite some years. First mistake: Capitalism has been wrestling with the problem of monopoly from day one. We have had repeated periods of monopoly. They have eventually led to movements, often of many people, to destroy or remove monopoly. We used to call that in America trust-busting, or antitrust. We even have a department within the Department of Justice in Washington devoted to antitrust activities. Yeah, we've been waging battles against monopoly over and over again, and you know why? Because we keep having monopolies over and over again. Google is a monopoly. Amazon is a monopoly. They're all around us: companies that have effectively no real competition. This is a problem that capitalism has always displayed. And that ought to lead you to wonder whether thinking about it as something we can do away with isn't maybe the best possible example of wishful thinking.

The second big mistake is to imagine that competition is some unmixed blessing. It never was, and it isn't today. A competitive market is a human institution. Like every other human institution, it has strengths, and flaws, and weaknesses. To think of competition as some magical perfection is a silly abnegation of your own rational capability to evaluate something. It's sort of advertising thinking. By that, I mean the advertiser tells you what's good about the product they've been told to advertise; they don't tell you what's bad about it. If you want to evaluate it, you don't talk to an advertiser because they only give you one side. The people who promote competition use advertising logic. We're not going to do that here. Competition is no unmixed blessing.

And finally, I'm going to show you that competition is itself the major cause of monopoly. So that even if we ever got back to a competitive capitalism, all that would mean is we're back in the process that produces monopoly – as it always has.

All right, so let's begin. I'm going to start with explaining how competition has all kinds of consequences that most of you, like me, don't like, don't want. It's a discussion, if you like, of competition's other side: you know, the part that the advertiser doesn't tell you about. The used-car salesman who wants you to buy that junk doesn't tell you about what happened last week in the car crash that that was part of, etc., etc.

All right, let's begin. One of the major reasons that American corporations shut down their operations in the United States and moved them to China, among other places, is because of – you guessed it – competition. They wanted to make more money than they had been before. They were afraid of other companies beating them in the competitive game, so they said wow, let's go to China, because there you can pay workers a lot less. There you don't have the same rules to obey. There they don't care that much about pollution as they do here. So we can save on all kinds of costs, and that will allow us to undercut our competitors. Yeah, one of the consequences of competition was the exodus of American companies to other parts of the world, and the enormous unemployment that resulted from it. Yeah, that was a result, among other things, of competition.

Here's another one: Capitalists, employers, seeking to compete with one another, often engage in what we call automation. They bring in machines that are cheaper to use than human laborers, and that gets them a step ahead of their competitors. Okay, if we replace people with machines, we throw those people out of work. That has an impact on them, their self-esteem, their relationship to their spouse, their relationship to their children, their relationship to alcohol – should I continue? What are the social costs of automation? They're huge. They've been documented over and over again. Competition provokes and produces automation.

Let me give you another example: Companies are competing, say, in the food business – you know, trying to get a customer like you or me to buy this kind of cereal rather than another. So they get their labs to go to work, and they discover we can replace wheat, which we used to put in our little flakes, with – Lord help us – some chemical that is cheaper than wheat. We're not going to worry about what that chemical does to your chemistry in your body because we can now lower the price of our cereal, because we're saving on wheat, and undercut the competitor. The human beings who eat this stuff will suffer, now and in the future, but competition left our producer of cereal no choice.

And in case you think I'm making some up, let me give you some concrete ones. The Boeing Corporation, the major producer of airplanes in this country, is in a crisis as a corporation. You know why? Because the 737 Max crashed a couple of times, killing hundreds of people. And you know why? It turns out they economized on safety measures, and training measures. And you know why they did that? Because they're in a very tight competition with European and other airplane manufacturers, and that leads them – as it usually does – to look to cut corners: that race for, quote, "efficiency." Yeah, it was competition that contributed to those deaths and to that problem. That's competition too. You can't whitewash this story; they're real. One of the ways Amazon beats its competition is it speeds up the work process. It has figured out ways to make people work much more intensely, using up their brains, their muscles, their nerves, in ways that cause real long-term physical damage to working people. That, too, is a result of the competitive effort.

And you know, it wasn't so long ago that children were part of the labor force. That's right, kids as young as five and six years of age. We were told they have little fingers, you see. They can be more productive than people who are adults with big fat fingers, you know – that doesn't work. And by the way, you should be grateful because poor kids are the ones we hire, and that gives their poor families more income than they would otherwise have. We heard those arguments. Competition, the companies said, required them to use the more productive, and the lower-wage, children rather than adults. So child labor was also a result of competition. It was so ugly and so troubling to so many people that finally there were movements in the United States and many other countries simply to outlaw child labor. So it became a crime for any employer to use a worker who was under 16 or 18 years of age. That was a way in which people said we are not going to allow competition among capitalists to destroy our children. They were recognizing that competition has an awful effect in what it does to children.

Well, it has many awful effects. So let's be clear: In the history of capitalism, the monopoly problem (which we're going to get to in the second half of today's program) is no worse, it's just different, from the competition problems. Capitalism goes through phases of competition and monopoly, going from one to the other, as I will explain. But we shouldn't bemoan the one in favor of the other, any more than vice-versa. These are neither of them solutions; they are both phases of the problem. And the problem is capitalism, which does its number on us both in the period when it's competitive and in the period when it's monopoly. People who want us to engage one more time in an anti-monopoly crusade are doing something that in the end evades the problem, which is the system – capitalism – not this or that form of that system, such as competition and monopoly.

We've come to the end of the first half of today's Economic Update. This gives me an opportunity to remind you, please, to sign up if you haven't already, to subscribe to our YouTube channel. It's a way easily for you to support us, doesn't cost any money, and it is a big help to us in terms of our reputation and what we can accomplish. Likewise, please make use of our websites. They are there for your communication with us. They are there for you to be able to, with a click of a mouse, to follow us on Facebook, Twitter, and Instagram. And finally, a special thanks goes, as always, to our Patreon community for their ongoing enthusiastic support. It means the world to us. My final, very final for this first half, is about a new book that we have just produced and released. It's a follow-up to an earlier volume I have spoken to you about that was called Understanding Marxism. For the same reason, we have now produced a brand-new book, just out, called Understanding Socialism. It is a response, as this program is, to issues, questions, comments you have sent to us in large numbers. It's an attempt to give an overview of the different interpretations of what socialism means, of what happened in countries like Russia and China that tried to create this – the strengths, the weaknesses, the lessons to be learned, what to do, and what not to do. Please, if you're interested and want to follow up, check us out, check the book out: lulu.com is how you find both books. And I will be right back; stay with us.

Welcome back, friends, to the second half of today's Economic Update. This program, as I explained, is devoted to the analysis of competition and monopoly as two interactive, sequential phases of capitalism as a system. The first part of the program was devoted mostly to competition, so let's turn now to monopoly. What is the basic definition and criticism of monopoly? Strictly speaking, monopoly is defined simply as a situation in which the producers of a particular commodity – shoes, software programs, haircuts, it doesn't matter – have been reduced to only one. Literally one seller – a monopolist. But in general language, it includes also situations where many producers who once competed with one another have been reduced to only a handful. The strict term for only a handful is "oligopoly," but we don't have to split hairs about this. "Monopoly" will be the word we use for either one or a very small number.

For example, there were once dozens of automobile companies, but very quickly their competition reduced them to basically three for much of the post-World War II period, and you know their names: Ford, General Motors, and Chrysler. And likewise there were once many cigarette producers, there were once many television-set producers, and they became very few, whose names, therefore, we all know.

What's the criticism of a monopoly or oligopoly situation? Again, very simple: The idea is, if there's only one seller of something, that seller can jack up the price way above what he might have otherwise because he doesn't have any competitor. If he had a competitor, if he raised the price, the competitor would get all the business because we'd all go to the competitor who hadn't raised the price rather than buy it at a higher price from the monopolist. So we don't like monopolies, because they can jack up their prices and their profits because they don't have a competitor. And if it's a few, a handful, well then we talk about things like cartels: arrangements when a few get together over dinner, or out on the golf course, and tell us what the price is. If you ever wondered why the prices of different cars, different cigarettes, and so on, are so close to one another – mm-hmm – that's because there are few sellers, and somehow they worked it all out. But the basic criticism is that a monopoly is a situation in which the seller of something jacks the price up way beyond what they could otherwise get because there are no more competitors.

So let's talk about this monopoly problem and where the monopolies come from. Well, the first and most important lesson is this: Competition produces monopoly. It's not something external, imposed on competition. It has nothing to do with human greed or anything else. Are people greedy? You betcha – some more, some less – but that's really a separate matter. It's competition that produces monopoly, and let me show you how that works. In competition, we have, by definition, a whole bunch of producers. They all produce the same thing. They compete with one another, hoping we, the consumer, will buy from one rather than the other. They compete in the quality of what they produce and in the price of what they produce. And we are supposed, as consumers, to go look for the best quality at the lowest price, and to patronize that one who offers that to us better than the others that we could buy from but choose not to.

Okay, that's a fair definition. Now let's follow the logic. Company A produces – however it manages it – a better quality and/or a lower price than Company B. So we all go to Company A. Company B can't find any buyers because it's not competitive. Or to say the same thing in other words, Company A outcompetes Company B. Here's what happens: Company B collapses. Because it can't sell its goods, we're all going to Company A. So Company B sooner or later declares bankruptcy. It can't continue. It lays off its employees, it stops buying inputs, because it can't compete. Good. Now what happens in Company A? Company A says hey, there's a whole bunch of workers that have just lost their job at Company B; they're trained in producing what we produce; let's go hire some of them. And likewise, Company A says, they're not using their computers, or their trucks, or their other inputs. They're going to have to sell them on the secondhand market. We can get some important inputs we need at a lower price than we would have to pay if we bought them new. So what begins to happen is, where before there were two companies, A and B, there's now one larger A, and B has disappeared. Or to say the same thing in simple English, A – the winner in the competitive struggle – eats, absorbs into itself, what's left of Company B.

And this process is repeated over and over, until 30, or 300, companies have become one, or two, or three. That's the result of competition. That's how competition is supposed to work. That's how competition does work. It's important to understand: Monopoly is where competition leads. And as if that weren't enough, let me make sure you understand this from the business point of view: It is the great dream of every entrepreneur to become the last one standing in the competition, to win the competition, not just because it makes you feel good you outmaneuvered your competitors, but because if you're the last one standing, you're the monopolist. The reward for having outcompeted the others is that you're now in a position to jack up the profits, and the prices, way beyond what you could have done before.

So we have a system that produces monopoly, and all the incentives for every entrepreneur in competition to work as hard as possible to become the monopolist. So why is anyone surprised that monopolies keep happening, because they're the whole point and purpose of capitalist competition. If you ever were – and we never have, but if you ever were – able to get rid of all the monopolies and re-establish competition, all you would be doing is setting this same process in motion again for the umpteenth historical time. In other words, fighting against monopoly is pointless as long as you have capitalism, because it is the endless reproducer of this problem – as it always has been.

Now, how do monopolies maintain themselves? If you're the only one standing, you're a monopolist. Or you're an oligopoly, you're a few, and you get together and jack up your prices together. The question becomes look, a monopolist makes very high profits – much higher than a competitor can achieve – and isn't that an enormous incentive for other capitalists to get in on that business? Because look at the profits they're earning, because they're the only one. Apple, Amazon, Google – the profits are staggering. Everybody wants to get in. So the way a monopolist has to think is, I've got to create obstacles that block other people from coming in to get a piece of the enormous profits my monopoly allows me to get. We call that in economics "barriers to entry." Monopolists need to create barriers. Let me give you a couple of examples.

The major soft drink makers in the United States – basically Coca-Cola and Pepsi Cola – they produce a drink that has sugar and coloring in it, and lots and lots of water. Let me assure you, there is nothing difficult or complicated about producing a mixture of sugar, color, and water. It doesn't take a genius; it never did. Pepsi and Coca-Cola make a fortune off of their product, as we know, and they have for decades. They have a virtual monopoly. Now, lots of other people could produce water, sugar, and color close to, if not identical with, whatever they produce, but they can't break through. They can't really get to that status. And you know why? Because Coca-Cola and Pepsi erected a barrier to entry. And the way they did that was with advertising. Every billboard, every magazine cover, every doorway of every institution you've ever been to has a picture of smiling, happy people drinking one or the other. You've learned: that's the drink, that's the drink. Another company might make a perfect substitute, but they can't afford the enormous cost of advertising. The advertising costs more than the water, and the sugar, and the color. What you pay for when you buy Pepsi and Coke is the advertising that got you to buy it. You're paying for being hustled. But it works, because it means other companies know that they can't get in there by cheaply producing an alternative, because you have to produce the advertising that goes with it, or else you can't do it. And so their monopoly is maintained.

Here's another way to maintain a monopoly: Get the government to step in. Here the famous example is the milk producers. Some years ago, there was a crisis with milk. There was contamination; people were getting sick. So the clever milk monopolies came in and said, we're going to support the enormously expensive, special equipment to guarantee pasteurization, and so on, of milk. Why did they support it? Because your small farmer, your small dairy producer, can't afford it, so they go out of business. Only the big, rich few that are left can afford the enormous equipment. They used governmental rules to create a barrier to entry.

Here's another way: corrupt public officials. President Trump denounces Huawei corporation because it compromises our national security. It denounces European car producers because somehow their shipping cars here compromises our security. Who cares? As long as the president blocks other companies from getting into the business that might compete with an American, a barrier to entry exists. Monopolists have been very creative in coming up with ways to preserve their monopolies.

I don't want to lose the basic point. The basic point is: Capitalism oscillates, back and forth between competition and monopoly – first this industry, then that one. For a while, Ford, General Motors, and Chrysler were the monopolies – or the oligopoly, if you like – in automobiles. But eventually, Toyota, and Nissan, and Peugeot, and Fiat broke the monopoly. In that case, it was foreigners who did it. And then we had some competition, and that, then, is now shrinking. The French – the last two producers in France – have just agreed to merge. You get the picture. Industry by industry, first this one, then that one, go through one phase or another.

The important point is: The phases are not our problem. They merge into, and incentivize, each other. Each provokes movement in the other direction. The point to understand is that the problems of a capitalist system are not about this oscillation of phases. We're not going to solve the problem of monopoly by getting rid of them and re-establishing competition. We've been there; we've done that; it reproduces monopoly; and it doesn't change the basic inequality, unsustainability, instability of capitalism. We need to get beyond that stale, old debate – competition versus monopoly – and face the underlying reality: Capitalism is the problem, and getting beyond it is the solution.

#### Vote neg to endorse global movements---pressures towards socialist state action are building, forces the hand of monopolies.

Carles MUNTANER ET AL. 15, MD, PhD, Professor in the Faculty of Nursing, Dalla Lana School of Public Health, and in the Department of Psychiatry, Faculty of Medicine, at the University of Toronto; Edwin Ng, PhD in Social Science and Health in the Dalla Lana School of Public Health; Haejoo Chung, associate professor in health policy at the Korea University College of Health Sciences; Seth J. Prins, PhD candidate in Epidemiology and a Psychiatric Epidemiology Training Program Fellow at Columbia University [“Two decades of Neo-Marxist class analysis and health inequalities: A critical reconstruction,” *Social Theory & Health*, Vol. 13, No. 3-4, Aug/Nov 2015, p. 267-287, Accessed Online through Emory Libraries]

An ostensible goal of all research on the social production of health inequalities is not merely to describe or explain such inequalities, but to effectively reduce them (Muntaner and Lynch, 2002; O'Campo and Dunn, 2011; Muntaner et al, 2012b). A Neo-Marxist class approach has implications for the way that researchers think about and engage with efforts to reduce health inequalities, implications that invert the mainstream relationship between research and action. A cursory glance at the conclusion sections of many population health studies reveals an almost rote focus on ‘policy implications’ relevant to policymakers. We argue here that, although this mainstream orientation to social class and health inequalities may appear innocuous or politically neutral, it in fact functions in the service of incremental, apolitical, technical changes that are ultimately system-justifying and status-quo-reproducing (Chomsky, 1971).

As we described at the outset, the individual attribute approach to social class tracked broader trends in social science theory and research towards reductionism and methodological individualism. This absolves researchers from engaging with social processes and relations, which demand analyses of exploitation, domination, and even employment relations. These intellectual trends, in turn, reflect structural changes in the political economy of academic institutions that produce such knowledge (Muntaner et al, 2012a). While a complete discussion of the impact of neo-liberalism on health inequalities research is beyond the scope of this analysis, we contend that such trends conform to political options that often perpetuate inequalities, because they produce knowledge that explicitly avoids the mechanisms that generate social and health inequalities.

What can a Neo-Marxist approach to social and health inequalities add? Aside from doing the opposite of the mainstream approach (that is, re-engaging with analyses of employment relations, exploitation, domination and other class processes), an important contribution of Neo-Marxist class analysis is to break the chain between health inequality research and the ‘policy mystique’. It can do this by flipping its orientation from the top-down to the bottom-up, and rediscovering and engaging with the rich diversity of poor people's and working class social movements whose struggles - class struggles - against inequality, including health inequalities, can become a target audience for research and action. Adopting a relational class approach means recognizing - not just politically, but from a pragmatic research design and implementation perspective - that the vast majority of ‘the 99 per cent’ are completely alienated from the policy space, both professionally and electorally. Examples of such bottom up class approaches would be the ‘Housing First’ program in Canadian cities (van Draanen et al, 2013) or public health action research with labour unions in the United States (Malinowski et al, 2015). A resurgence of poor, working class, and climate-justice activism, from the international outgrowths of Latin America's left turn and the Arab Spring (Muntaner et al, 2011) to the anti-austerity movements in the European Union (Tugas, 2014), provides compelling opportunities for researchers to address new, grassroots stakeholders.

Recognizing that the vast majority of the population is on the opposite side of the class struggle than 'policymakers' does not imply that we should abandon progressive health policy reforms, but it means that we should adopt a more critical, bottom-up perspective towards how policy changes affecting the public's health are ultimately achieved. This is not to say that all researchers of social inequalities in health must become public social scientists (Burawoy, 2005) but it is to say that we cannot consign ourselves, under a thin veil of neutrality, to de facto approaching policy from a privileged position of access to elites, that is, from the orientation of serving policymakers. At the very least, we should have a more class-conscious perspective (Burawoy, 2014). Returning to and advancing relational approaches to class may be the only way this will be possible.

### Trade DA---1NC

#### The plan is perceived as a protectionist shockwave that shreds any semblance of global free trade.

Allison Murray 19. JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Winter. “Given Today's New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?” Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Lexis.

INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western *leaders* in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western *lawmakers* themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuclear war.

Dr. Michael F. Oppenheimer 21. Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations,” in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, eds. Ankersen and Sidhu, p. 23-30.

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

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

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

Secular Stagnation

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

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

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

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

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

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

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

Illiberal Globalization

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

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

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

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

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

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

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

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

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

### States CP---1NC

#### The 50 states, Washington, D.C., and all relevant territories should prohibit anticompetitive business practices that are exempt from penalties via state action immunity.

### FTC Trade Off---1NC

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

### Courts PIC---1NC

#### The United States federal government, without utilizing the federal judiciary, should substantially expand the scope of the Sherman Act by reducing state action immunity by the private sector in cases of non-politically accountable active supervision in cases of non-politically accountable active supervision.

#### The federal judiciary should not grant cert to any challenges to the expansion of scope of the Sherman Act.

Their plan for reference: The United States federal government, utilizing at least the federal judiciary, should substantially expand the scope of the Sherman Act by reducing state action immunity by the private sector in cases of non-politically accountable active supervision.

### Courts DA---1NC

#### The Supreme Court will decline to overturn Roe v. Wade now—Roberts’ influence the conservative bloc is key

Ziegler 21 (Mary - law professor at Florida State University, “The potential silver lining for supporters of abortion rights,” 5/20/21, https://www.bostonglobe.com/2021/05/20/opinion/potential-silver-lining-supporters-abortion-rights/)

Dobbs v. Jackson Women’s Health involves a Mississippi law banning abortion at or after 15 weeks of pregnancy, with exceptions for some medical emergencies and severe fetal abnormalities. Most abortions — over 92 percent, according to the most recent data from the Centers for Disease Control and Prevention — occur in the first trimester, and if the Mississippi law is allowed to stand, those wouldn’t be blocked. But pro-choice Americans have reason to be concerned. To uphold Mississippi’s law, the court’s conservative six-justice majority would have to overturn at least part of Roe v. Wade and the abortion-rights cases that followed it. That’s because Roe recognized a right to choose abortion before fetal viability — the point at which survival outside the womb is possible — which is usually somewhere between 22 and 24 weeks. Because Mississippi’s ban would kick in much earlier, the court will be able to uphold it only by eliminating Roe’s language about fetal viability or by reversing Roe altogether. Of course, predicting the outcome of abortion cases has proved to be devilishly hard. In the early 1990s, the Supreme Court had a six-justice conservative bloc and a case teed up to reverse Roe, yet the justices balked when the moment came. It’s certainly possible that something similar could happen this time around. Chief Justice John Roberts, who cares about safeguarding the court’s legacy (and his own), may persuade his conservative colleagues not to go all the way to eliminating abortion rights.

#### Ruling against big business interests drains Roberts’ capital—counter to conservative lobbying efforts

Pickerill 17 (J. Mitchell – Professor of Political Science at Northern Illinois University & Cornell W. Clayton- - Professor of Government at Washing State University, “The Roberts Court and Economic Issues in an Era of Polarization,” p. 695-98, *Case Western Reserve Law Review*, Volume 67, Issue 3, https://core.ac.uk/download/pdf/214111285.pdf)

A. The Emergence of a Conventional Wisdom: The Roberts Court is Decidedly Pro-Business By now, the Roberts Court’s reputation as a pro-business Court has become something like the conventional wisdom for Supreme Court scholars and commentators. In 2008, Jeffrey Rosen wrote an article titled Supreme Court, Inc. in New York Times Magazine.7 Rosen argued that, whereas the Court had embraced a form of “economic populism” throughout most the latter half of the twentieth century, by the 2000s it had transformed into a decidedly pro-business venue.8 A generation ago, progressive and consumer groups petitioning the court could count on favorable majority opinions written by justices who viewed big business with skepticism—or even outright prejudice. The economic populist William O. Douglas, a former New Deal crusader who served on the court from 1939 to 1975, once unapologetically announced that he was “ready to bend the law in favor of the environment and against the corporations.”9 Today, however, as Rosen pointed out, “there are no economic populists on the court, even on the liberal wing.”10 In addition to quoting pro-business statements from members of the so-called liberal wing of the Roberts Court at the time, Rosen noted that, when compared to prior years, the proportion of cases involving business interests was up about ten percent during the early years of the Roberts Court.11 Rosen also highlighted several cases involving antitrust law, corporate mergers, punitive damages, and product liability in which the interests of big business seemed to be faring well in the Court.12 These cases didn’t seem to split the Roberts Court along conventional ideological lines. In a 2009 law review article, Rosen reported that, when he asked Justice Stephen Breyer about the Court’s probusiness orientation, “he did acknowledge that there might be a difference between constitutional cases, where Justices have strong preconceptions and philosophical commitments, and more technical, statutory cases, where they are more open-minded and amendable to argument.”13 Finally, Rosen explained the pro-business shift as a function of a decades-long effort by conservative and business groups to counter the effects of consumer groups and public interest litigation groups like Public Citizen. 14 In particular, he credited the U.S. Chamber of Commerce’s lobbying efforts and the National Chamber Litigation Center, established in 1977, for advocating business interests in state and federal courts. 15 Various examples and statistics indicated that through filing amicus briefs on behalf of business interests, the Chamber was successful both in persuading the Court to grant certiorari and on the merits in particular cases. Although Rosen’s article garnered much attention, he was not the only journalist or commentator claiming the Court was “probusiness.”16 For example, writing for Bloomberg Business, Michael Orey declared that the Roberts Court was “open for business.”17 And in an article in the Wall Street Journal, Brent Kendall explained that the Supreme Court is “making it easier for companies to defend themselves from the kinds of big lawsuits that have bedeviled them for decades.”18 Some legal academics agreed. For instance, Erwin Chemerinsky wrote that “the Roberts Court is the most pro-business Court of any since the mid-1930s.”19 All of this attention to the Roberts Court and its business decisions led to further academic research and scholarship examining whether and to what extent the Roberts Court could be considered “pro-business.”20 Much of the early characterization of the Roberts Court as “probusiness” has been based on specific Supreme Court decisions, such as Ledbetter v. Goodyear Tire & Rubber Co.21 and Riegel v. Medtronic, Inc., 22 or specific Supreme Court terms, such as the 2006 term in which the U.S. Chamber of Commerce won in thirteen of the fifteen cases in which it had filed a brief.23 Nonetheless, there have also been more systematic analyses of the Court and its disposition toward business interests. Lee Epstein, William Landes, and Richard Posner conducted one of the most well-known systematic empirical analyses of the Supreme Court and business interests.24 In their study, Epstein, Landes, and Posner selected Supreme Court decisions from the 1946 term through the 2011 term of the Court in which a business entity was a litigant.25 They analyzed the likelihood that business entities would prevail in the Court over time.26 Controlling for numerous factors, they concluded: Whether measured by decisions or Justices’ votes, a plunge in warmth toward business during the 1960s (the heyday of the Warren Court) was quickly reversed; and the Roberts Court is much friendlier to business than either the Burger or Rehnquist Courts, which preceded it, were. The Court is taking more cases in which the business litigant lost in the lower court and reversing more of these—giving rise to the paradox that a decision in which certiorari is granted when the lower court decision was antibusiness is more likely to be reversed than one in which the lower court decision was pro-business. The Roberts Court also has affirmed more cases in which business is the respondent than its predecessor Courts did.27 Thus, the Epstein, Landes, and Posner empirical study seems to confirm the conventional wisdom.

#### U.S. reproductive rights policy models globally

GFW 17 (Global Fund for Women; January 20; Feminist fundraising organization devoted to global gender justice movements; GFW, “Women’s movements matter more than ever: A critical moment for global women’s rights,” <https://www.globalfundforwomen.org/what-we-do/voice/campaigns/build-movements-not-walls/womens-movements-a-critical-moment-for-global-womens-rights/>)

We have decades of proof that U.S. policies and leadership directly influence policies and decisions globally, and we know that it is women who are often most acutely impacted—for better or for worse. For example, we know that U.S. policies can directly block women’s access to reproductive health and rights. The ‘Global Gag Rule’ prohibited U.S. foreign aid to any organization that delivers abortion services, but was repealed by President Obama. Before the law’s repeal, there was a massive chilling effect on many global efforts for reproductive health—and in one of his first executive actions as President, Trump reinstated and expanded the Global Gag Rule, which will have damaging impacts on women’s access to critical health care ranging from maternal care to sex education, to access to contraception and HIV and AIDS prevention and services. Conversely, the U.S. State Department’s leadership on issues such as ending child marriage has been a positive global force for advancing women’s rights. The U.S.’s stance on human rights is critical to protecting women’s rights all over the world—especially in armed conflict and political turmoil as it is in such scenarios that sexual violence escalates and women’s needs and voices are often silenced. At this moment of transition, women’s movements around the world are poised to ensure that women’s voices are heard and that human rights are not rolled back. They tell us that they will continue to advocate for key issues like reproductive rights, ending sexual violence in conflict, and girls’ rights. They are determined to grow and flourish, to make connections, and to work together across borders. “At a time of transition like this it is understandable to worry about the future, especially for women and girls,” says Musimbi Kanyoro, President and CEO of Global Fund for Women. “But I’ve worked my entire career with women’s movements around the world, and because of them, I remain hopeful. At this critical moment, women’s movements are becoming stronger, more global, and more inclusive than ever before. When they have access to the resources and tools that they need, they are a force to be reckoned with. As we commit to resisting regressions in women’s rights and advocating for what we believe in, let’s all work together to #BuildMovementsNotWalls.” Global Fund for Women spoke with our network of women activists and grassroots leaders from around the world to better understand their hopes and concerns in relation to the new U.S. President and his administration, and the potential for impact on their own work. From Brazil to Iraq, and from Nigeria to the Ukraine and Israel, women’s rights leaders are examining the potential repercussions for women and girls. They offer advice for people in the U.S. for movement-building and resistance, and share their hopes for a strong, collective force that will fight across borders against rollbacks to rights and threats to activists. A critical global moment for women’s rights The transition of power in the U.S. comes at a critical time for women’s rights around the world. Women all around the world are facing threats to their fundamental rights, ranging from abortion access and ending sexual violence to racial justice and environmental rights. Global movements for reproductive health and rights—including campaigns for access to contraceptives and safe and legal abortion—are at a critical moment. They are under threat in countless places, including in Latin America and the Caribbean where maternal mortality rates from unsafe abortions are highest, and facing powerful opposition from religious and cultural fundamentalists and others. Groups working with refugee women and girls also face a pivotal moment. The vast majority of Syrian refugee women and girls are hosted in Lebanon, Turkey, and Jordan, where women’s groups are focused on providing core services including anti-violence training and healthcare while empowering refugee women with knowledge about their rights, leadership skills, and economic opportunities—and these women’s groups are advocating for critical changes in national laws that restrict refugees’ access to jobs, hospitals, and other basic rights citizens have. Concerns are escalating about how the policies of a new U.S. administration may impact their work. Feminist activists globally are increasingly facing fears for their safety. For example, in Egypt, Turkey, and several other countries, we’ve witnessed an escalating crackdown on feminist and human rights activism, including harassment against women human rights defenders and threats to journalists and academics. In many places—such as the Inter-American Commission on Human Rights and Court—U.S. influence is a critical factor in enforcing mechanisms for their protection. In countries from Sub-Saharan Africa to Asia and the Pacific, grassroots women are coming together to protect their land and water rights amid climate change and increased violence to improve their own farming and local food sources, and to increase their economic opportunities. Women are standing up against rollbacks to rights, resisting the rise of conservatism, blocking dangerous anti-women policies, and fearlessly defending women’s rights amid conflicts and political and economic crises. Conservative leadership is on the rise in many countries around the world and women’s groups are joining forces to share their strategies of resistance. Connecting the dots in threats to fundamental rights globally—and learning together “As far as women and other civil society organizations [in Africa] are concerned, all progressive issues might suffer under a Trump Presidency,” says Bisi Adeleye-Fayemi, co-founder of African Women’s Development Fund and Global Fund for Women Board Member. “Women’s rights, sexual and reproductive rights, climate change, LGBTQ individuals, Muslim people, refugees… are not likely to get the attention they deserve—they will probably get the wrong kind of attention.” Indeed, policy stances in the U.S. will have a direct impact on global communities and situations. And by and large, many of the key human rights issues that are coming into play in U.S. domestic policy including access to reproductive health and rights and ending violence against women, are issues that are under the spotlight in other places around the world. U.S. leadership could play a significant role—either in moving the needle positively on these critical issues, or in condoning or precipitating the rollback of hard-won gains.

#### Expanding reproductive freedom slows overpopulation—extinction

Engelman 11 (Robert; May 2011; Vice President for Programs at the Worldwatch Institute, M.Sc. from Columbia University; Solutions, “An End to Population Growth: Why Family Planning Is Key to a Sustainable Future,” vol. 2)

In a joint statement in 1993, representatives of 58 national scientific academies stressed the complexities of the population-environment relationship but nonetheless concluded, “As human numbers increase, the potential for irreversible changes of far-reaching magnitude also increases. … In our judgment, humanity’s ability to deal successfully with its social, economic, and environmental problems will require the achievement of zero population growth within the lifetime of our children.”3 In 2005, the United Nations’ Millennium Ecosystem Assessment identified population growth as a principal indirect driver of environmental change, along with economic growth and technological evolution.4 In October 2010, a group of US and European climate and demographic researchers published findings from an integrated assessment model calculating the impact of various population scenarios on fossil-fuel carbon dioxide emissions over the coming century. If world population peaked at close to 8 billion rather than 9 billion, along the lines described in a low-fertility demographic projection published by the UN Population Division, the model predicted there would be a significant emissions savings: about 5.1 billion tons of carbon dioxide by 2050 and 18.7 billion tons by century’s end.5 What if we could prove wrong the popular conviction that a future with 9 billion people and a growing population is inevitable? Suppose we could demonstrate that world population size might peak earlier and at a lower level if government policies aimed not at reproductive coercion but at individual reproductive freedom? Suppose such policies aimed to help all women and girls prevent unwanted pregnancies and conceive only when they want to bear a child? This article presents new data on births resulting from women’s active intentions to become pregnant. The hypothesis it probes may appear counterintuitive: if, starting at any moment, all pregnancies in the world resulted from each woman’s intent to give birth, human population would immediately shift course away from growth toward decline within a few decades. An Ethical Basis for Action to Slow Population Growth What can societies that value democracy, self-determination, human rights, personal autonomy, and privacy do to include demographic change among strategies for environmental sustainability? An important answer may lie in a relatively untested set of principles adopted by almost all the world’s nations at a 1994 UN conference held in Cairo. The third of three once-a-decade governmental conferences on population and development, it produced a program of action that abandoned the strategy of “population control” by governments in favor of a focus on the health, rights, and well-being of women.6 An operating assumption of this program is that when women have access to the information and means that allow them to choose the timing of pregnancy, the intervals between births lengthen, average family size shrinks, and teen births become less frequent. All of these improve maternal and child survival and slow population growth.7 Experts disagree on how reproductive autonomy compares with other strategies in slowing that growth. Some assume economic growth is the most effective means, although birthrates rose along with prosperity in many countries after World War II and remain relatively high in several wealthy oil-exporting nations in which women have fewer rights and lower status than men.8 Moreover, some analysts argue that the arrow of causation operates more in the other direction, with low fertility stoking economic growth.9 There is a more robust and demonstrable correlation between female educational attainment and fertility. Worldwide, women with no schooling have an average of 4.5 children, while those who have spent at least a year or more in primary school have just three. Women who complete at least a year or two of secondary school have 1.9 children—well below replacement fertility rates. With one or two years of advanced education for women, average childbearing rates fall even further, to 1.7.10 On this basis alone, those interested in depressing population growth rates might want to focus on improving women’s educational attainment. Questions remain about whether education alone can bring about declines in fertility without other supporting conditions, especially easy, affordable access to a range of contraceptive options. Similar uncertainties cloud understanding of exactly how improved child survival and the empowerment of women affect fertility. Improving both factors certainly contributes to later births and smaller families and is valuable regardless of its demographic impacts. But without clear data on the magnitude of these influences, interventions related to schooling, child survival, and women’s empowerment are rarely seen as core aspects of governmental population policy. This brings us to family planning. Access to safe and reliable contraception has exploded since the mid-twentieth century. An estimated 55 percent of all heterosexually active women worldwide now use modern contraceptive methods, while an additional seven percent use less reliable traditional methods.11 As the use of birth control has spread, fertility has plummeted from a global average of five children per woman in 1950 to barely more than 2.5 today.1

## Let’s Get Fiscal

### Circumvention

#### Plan gets circumvented---they can just label everything political!

### Turn---1NC

#### Anti-trust law can’t be distinguished in specific industries. It’s enforced in generalist common law unlike regulation.

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I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20

The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself.

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26

Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts.

C. Market-Driven Case Selection

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

[\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

D. Generalists versus Industry Experts

Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39

As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges.

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics.

[\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42

The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction.

However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement.

The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary.

The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Unpredictable legal shifts wreck business confidence.

Sarah Chaney Cambon 21, Reporter on The Wall Street Journal's Economics Team, BA in Business Journalism from the University of North Carolina-Chapel Hill, “Capital-Spending Surge Further Lifts Economic Recovery”, Wall Street Journal, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery.

Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook.

Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak.

Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.

“Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.”

Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic.

Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists.

Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence.

The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’”

Businesses appear to be less risk-averse now, he said.

After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital.

Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first.

“We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities.

Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

### AT: Pricing

#### Predatory pricing thesis is wrong.

David R. Henderson 17. Research fellow with Stanford University’s Hoover Institution and a professor of economics at the Graduate School of Business and Public Policy at the Naval Postgraduate School in Monterey, California, 5/1/17. “Why Predatory Pricing Is Highly Unlikely”

A widely held belief is that large firms with some market power can use their profits generated in particular markets to cut prices below costs in another market and drive out their competitors. Then, according to this belief, once the competitors are driven out, the large firms can raise their prices in that market and collect higher-than-competitive prices.

There are two problems with this view. First, it is logically deficient. Second, there is little evidence to support it.

Why does the issue matter? One main reason is that there are strictures against predatory pricing in U.S. antitrust law. But even if predatory pricing occurred, it would be hard in practice to distinguish between predatory pricing and simple healthy competitive price cutting. The more rare predatory pricing is, the more likely it is that successful prosecutions of alleged predatory pricing are unwitting attacks on healthy price competition. This would hurt consumers and some of the most-efficient firms. Fortunately, as we shall see, the Federal Trade Commission, the agency that enforces restrictions against predatory pricing, seems to understand the reasoning I’m about to explain.

The classic alleged case of predatory pricing was that of Standard Oil of New Jersey. Back in the 1950s, Aaron Director, a law professor at the University of Chicago and one of the founders of the discipline of law and economics, using basic economic reasoning, predicted that a look at the record would show that Standard Oil did no such thing. He persuaded economist John S. McGee to examine the trial record. The result was the article quoted above, which has become famous. There was, indeed, no evidence in the trial record that Standard Oil engaged in predatory pricing.

The Economic Problem with Predation

Why is predatory pricing so unlikely? To see why, let’s take a plausible numerical example. Imagine that Firm A makes high profits in market X and is the sole seller in that market. Firm A wants to knock out firm B in market Y. Imagine that both Firm A’s and Firm B’s average costs are $5 per unit and that they are each pricing at $6 per unit. I’m including a competitive cost of capital in average cost. Firm A currently sells 5,000 units monthly in market Y and Firm B sells 1,000 units monthly. Why do I assume Firm A sells more than B? Because the usual predatory pricing story is that the firm with the larger market share uses predatory pricing to knock out the firm with the smaller share.

To engage in predatory pricing, Firm A must cut its price in market Y to below $5 per unit. If it simply cut price to, say, $5.50, Firm B could cut price to $5.50 also and weather the storm indefinitely since it is still more than covering its $5.00 average cost, which, recall, includes the cost of capital.

So imagine that Firm A cuts it price to $4.00. Imagine that Firm B matches the price cut. If the demand were perfectly inelastic, each would continue to sell the number of units it sold before. More realistically, though, at a lower price more would be demanded. Let’s assume that the quantity demanded increases by 20 percent, to 7,200. How will that quantity demanded be split between the two firms? There is no reason to think that Firm B, the prey, will simply increase output in response to the higher quantity demanded. Remember that the price is now lower and so when prices fall, firms typically respond by cutting output, not increasing it. Let’s be conservative, though, and assume that Firm B does not change its output. So Firm B continues to sell 1,000 units and Firm A sells 6,200 units.

Now both Firm A and Firm B will make losses. Notice something interesting, though. Firm A’s losses will exceed Firm B’s losses. Firm A will lose $1 each on 6,200 units, for a total loss of $6,200 per month. Firm B will lose $1 each on 1,000 units, for a total loss of $1,000 per month. And remember that we reached this conclusion by assuming, possibly unrealistically, that Firm B does not cut back its output.

So far, it’s not looking good for either firm. But, as hypothesized, Firm A’s high profits in market X allow it to last longer than Firm B. Assume that the price war lasts one year and then Firm B is knocked out. Firm A then proceeds to raise prices.

How high must Firm A plan to raise prices to make its year of losses worth bearing? That will depend on how long Firm A goes without competition in market X. If Firm A could be assured that there would never be another competitor in market X, then it could do well by pricing a little lower than the previous $6. The reason is that, although, it would make a little less than its old $1 per unit, it would sell more units and, over time, would more than make it up.

“The new competitor could buy Firm B’s assets at fire-sale prices, thus reducing average cost.”

But Firm A now has a tough problem. If it sells for anything more than $5, another competitor might enter. There is no reason to think that another competitor couldn’t match the $5 average cost. And there is some reason to think that its cost could be lower than $5. Why? The new competitor could buy Firm B’s assets at fire-sale prices, thus reducing average cost.

Moreover, what if Firm B responds to Firm A’s price cut, not by matching it, but by closing down temporarily. Why might it do so? One reason would be that its average variable cost (AVC) is less than its average cost. Imagine that its average variable cost is $4.50. Now, while Firm B is shut down, its loss is not $1 per unit ($4 − $5), but 50 cents per unit (its $5 average cost minus its avoided $4.50 AVC.) Firm A’s losses, by contrast, are a full $1 per unit, and now, since Firm B is selling nothing, Firm A’s loss is on 7,200 units. So Firm A is in even worse shape than if Firm B had matched the $4 price.

For more information, see Antitrust, by Fred McChesney, and the biography of Reinhard Selten in The Concise Encyclopedia of Economics. See also the EconTalk podcast episode Boudreaux on Market Failure, Government Failure and the Economics of Antitrust Regulation, Oct. 2007.

I have left out one other way the prey can respond to a potential predator: by buying the predator’s product. Business historian Burton Folsom documents a case in which this actually happened. In 1904, a German cartel called the Bromkonvention dominated the world market for bromine. It engaged in predatory pricing to put Dow Chemical Company out of the business. Herbert Dow responded by buying low-priced bromine from the cartel, repackaging it, and reselling it profitably globally; some of Dow’s customers were in Germany.1

In my numerical example above, I posited that Firm A and Firm B have the same average costs. But what happens if potential predator A has lower costs than prey B? Can’t A then cut price to a level below B’s cost but still make money with a price above its own cost? Yes. But that’s not predatory pricing. That’s simply healthy price competition. It appears to be what Walmart engages in. It’s hard to argue that Walmart is unprofitable. Instead, Walmart, using cutting-edge technology and aggressive strategies on the prices it pays suppliers, has lower costs than the competitors that it knocks out of business.

The Game Theory Counterargument

My argument is not slam-dunk. But it’s close to slam-dunk. I remember, as a UCLA graduate student, using the above arguments in a conversation with the late UCLA economist Earl Thompson. Thompson, who was more familiar with game theory than I was, didn’t deny my arguments. Instead, he argued that a potential predator could “credibly commit” to predatory pricing without necessarily having to engage in it. Since then, other game theorists have made the same argument. The argument is slightly plausible, but unlikely to be important in practice. Even if one potential prey is credibly scared off, others might not be. 2 Moreover, economist John R. Lott, Jr. broke new ground on this issue in 19993 by going beyond game-theory models and testing one of the key assumptions that led game theorists to the idea that credible commitment could work. As Eric A. Helland of Ball State University wrote in his excellent review4 of Lott’s book, the key question is: are CEOs of the allegedly predatory firm “hawks” or “doves?” Helland writes:

A “hawk” is a firm that will actually cut prices to drive out an entrant. A “dove” is a firm that will acquiesce to entry because it cannot bear the short-term losses entailed by engagement in predatory pricing. Of course, doves threaten predatory pricing just as hawks do. How can the entrant discover who is a hawk and who a dove?

Lott pointed out that a CEO who is a hawk must have high job security, or else shareholders and boards of directors will get restless when observing the predator’s losses. Does he? Lott studied 28 firms accused of predatory pricing to see if they had a more “hawk-like” governance structure than that of other firms. As Helland summarizes, “Lott finds few differences in CEO turnover, incorporation in a state with antitakeover provisions, stock ownership, or CEO pay sensitivity between the firms accused of predatory pricing and a control group.” So a key implicit assumption of the “credible commitment” story turns out to be untrue. As Lott put it, “The results seriously challenge the relevance of game-theoretic predatory models by showing that their assumptions are inconsistent with actual firm behavior.5

The case that predatory pricing is highly unlikely remains strong.

#### No markups

Mary Amiti and Sebastian Heise 21. Vice president in the Federal Reserve Bank of New York’s Research and Statistics Group, and economist in the Bank’s Research and Statistics Group. 6/21/21. “Has Market Power of U.S. Firms Increased?” https://libertystreeteconomics.newyorkfed.org/2021/06/has-market-power-of-us-firms-increased/

A number of studies have documented that market concentration among U.S. firms has increased over the last decades, as large firms have grown more dominant. In a new study, we examine whether this rising domestic concentration means that large U.S. firms have more market power in the manufacturing sector. Our research argues that increasing foreign competition over the last few decades has in fact reduced U.S. firms’ market power in manufacturing.

Measuring Market Power

A rise in market power is often interpreted to mean that firms can increase their markups over marginal cost without sacrificing profitability. However, markups are unobservable, which helps explain why different studies don’t agree on whether aggregate markups have risen or not. Our interpretation of market power relies on a large class of international trade models, where firms with a higher market share set higher markups. Through the lens of these models, as market concentration rises, aggregate markups increase. Higher markups are undesirable from the perspective of consumers because they redistribute income from consumers to producers.

Data

Our analysis draws on confidential firm-level data from the U.S. Census Bureau from 1992 to 2012 for industries in the manufacturing sector. Importantly, it includes sales data for all firms selling in the U.S. market, both domestic and foreign firms. Foreign firm sales are available from customs forms collected by U.S. Customs and Border Protection and available through the Census. Usually, the sales of foreign firms to the U.S. market are not included in analyses of market concentration as publicly available data only comprise U.S. firms’ sales. However, in order to get an accurate picture of market concentration, it is critical to also include the sales of foreign competitors in the market. For example, a car manufacturer in the United States not only competes with domestic car manufacturers but also with imported cars. We use the market share of the top twenty firms in an industry as our measure of market concentration.

Has Market Concentration Increased?

In the chart below, we plot the market concentration, averaged across all industries within manufacturing. The solid red line depicts domestic concentration, computed using U.S. firms’ total shipments, that is, the market share of the top twenty U.S. firms relative to other U.S. firms. As in earlier studies, we find that this domestic market concentration measure has increased. However, once we compute market concentration using all firms selling in the United States, inclusive of foreign firms, we find that market concentration has in fact remained stable (blue line). This finding suggests that aggregate markups computed using both foreign and domestic firms have remained stable.

The previous chart suggests that the fall in the market share of the top U.S. firms is exactly offset by the rise in the share of the foreign firms. In the chart below, we plot what share of the market is accounted for by firms of a given ranking summed across industries. To see how these shares evolved, we plot the information for 1992 with darker colors and for 2012 with lighter colors. We split each bar into the market share accounted for by domestic firms in blue and by foreign firms in red. The chart shows that in 1992 domestic firms with rank 1 had a market share of 12.4 percent, which fell to 12.0 percent in 2012. At the same time, foreign firms with rank 1 increased their market share from virtually zero to 0.4 percent of manufacturing sales. We see that the largest gain in foreign firm market shares has been in the lower part of the distribution. The market share of foreign firms ranked higher than fiftieth within an industry rose from 6.9 percent to 14.4 percent. There is very little gain by foreign firms in the top part of the market share distribution.

Market Concentration and Import Competition

Market concentration fell mostly in those industries that experienced the fastest growth in import competition since 1992. In contrast, concentration grew in industries with low import competition. The next chart plots an industry’s change in import penetration between 1992 and 2012 against the change in concentration over the same period. Import penetration is defined as an industry’s imports divided by domestic sales, that is, shipments minus exports plus imports. Each circle is a group of industries, ranked by their change in import competition, where the size of each circle is proportional to domestic sales in 1992. The dashed line depicts the linear fit of these circles. We find that industries exposed to increasing import penetration saw a decline in concentration, while concentration grew in industries that have a low number of foreign firms. Publicly available data from the Census Bureau show that the former group of industries includes, for example, audio and video equipment manufacturing, while the latter group includes, for example, concrete manufacturing.

How do we reconcile the different trends in domestic concentration and overall market concentration? According to trade theory, tougher import competition leads to the exit of smaller, inefficient U.S. firms and reduces U.S. firms’ domestic sales. At the same time, large U.S. firms gain because trade liberalization allows them to export more. Consistent with these predictions, we find based on regression analysis that import competition caused the exit of domestic firms, and thus the large U.S. firms gained market share relative to total sales of U.S. firms. However, once we consider the total sales in the U.S. market, inclusive of imports, we find that import competition caused the market share of the largest U.S. firms to fall, as foreign firms gained some of the domestic firms’ market share. Our results suggest that import competition reduced the market share of the top twenty U.S. firms by an average of about 0.8 percentage point since 1997, accounting for about half of the actual decline in their market shares.

What do these findings imply for the market power of U.S. firms? In light of the predictions of many trade models, our findings suggest that the market power of large U.S. firms has actually fallen in many industries since their share in the overall market has declined. In sum, our analysis suggests that the increasing concentration among U.S. firms themselves is entirely consistent with lower markups of these firms because of tougher import competition.

### AT: Wages/Labor

#### The thesis of their advantage is wrong.

Alden Abbott 21. Senior research fellow at the Mercatus Center, focusing on antitrust issues. He previously served as the Federal Trade Commission’s General Counsel from 2018 to early 2021. 3/31/21. “Four Reasons to Reject Neo-Brandeisian Critiques of the Consumer Welfare Approach to Antitrust.”

First, the underlying assumptions of rising concentration and declining competition on which the neo-Brandeisian critique is largely based (and which are reflected in the introductory legislative findings of the Competition and Antitrust Law Enforcement Reform Act [of 2021, introduced by Senator Klobuchar on February 4, lack merit]. Chapter 6 of the 2020 Economic Report of the President, dealing with competition policy, summarizes research debunking those assumptions. To begin with, it shows that studies complaining that competition is in decline are fatally flawed. Studies such as one in 2016 by the Council of Economic Advisers rely on overbroad market definitions that say nothing about competition in specific markets, let alone across the entire economy. Indeed, in 2018, professor Carl Shapiro, chief DOJ antitrust economist in the Obama administration, admitted that a key summary chart in the 2016 study “is not informative regarding overall trends in concentration in well-defined relevant markets that are used by antitrust economists to assess market power, much less trends in concentration in the U.S. economy.” Furthermore, as the 2020 report points out, other literature claiming that competition is in decline rests on a problematic assumption that increases in concentration (even assuming such increases exist) beget softer competition. Problems with this assumption have been understood since at least the 1970s. The most fundamental problem is that there are alternative explanations (such as exploitation of scale economies) for why a market might demonstrate both high concentration and high markups—explanations that are still consistent with procompetitive behavior by firms. (In a related vein, research by other prominent economists has exposed flaws in studies that purport to show a weakening of merger enforcement standards in recent years.) Finally, the 2020 report notes that the real solution to perceived economic problems may be less government, not more: “As historic regulatory reform across American industries has shown, cutting government-imposed barriers to innovation leads to increased competition, strong economic growth, and a revitalized private sector.”

#### Their studies are wrong.

Joe Kennedy 20. Senior fellow at ITIF, former chief economist with the U.S. Department of Commerce, and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. “Monopoly Myths: Are Markets Becoming More Concentrated?” https://itif.org/publications/2020/06/29/monopoly-myths-are-markets-becoming-more-concentrated

Over the past several years, a number of scholars and pundits have alleged that market concentration is rising across the U.S. economy, leading to a decline in competition. A common claim is that much of this concentration is due to lax antitrust enforcement, which has allowed firms to grow through mergers. Increased concentration in turn is blamed for a number of social ills, including slow productivity growth, excess profits, and stagnant wages. These claims have been used by some to call for a radical restructuring of antitrust policy, including imposing much stricter limits on mergers.1

Yet, when looked at more closely, the problem is far less serious than the broad pronouncements would suggest. Despite the measured rise in concentration in some industries, in the vast majority of markets, it remains well below the levels that would normally trigger antitrust concern. But there are measurement issues as well. For one thing, these studies often use an inappropriately broad definition of “the markets,” and omit the role of imports that reduce concentration. Second, most look only at national concentration levels, when many markets are local in nature. Recent studies conclude that concentration in most local markets has been steady, or even falling. Finally, a certain degree of concentration may be good. Rather than leading to a decline in competition, it may result in increased competition in which more productive firms increasingly gain market share over their less productive and less innovative rivals.

#### Long term labor power now.

Irwin ’21 [Neil; June 5; senior economics correspondent; New York Times, “Workers Are Gaining Leverage Over Employers Right Before Our Eyes,” <https://www.nytimes.com/2021/06/05/upshot/jobs-rising-wages.html>; KP]

Yet in key respects, the shift builds on changes already underway in the tight labor market preceding the pandemic, when the unemployment rate was 4 percent or lower for two straight years.

That follows decades in which union power declined, unemployment was frequently high and employers made an art out of shifting work toward contract and gig arrangements that favored their interests over those of their employees. It would take years of change to undo those cumulative effects.

But the demographic picture is not becoming any more favorable for employers eager to fill positions. Population growth for Americans between ages 20 and 64 turned negative last year for the first time in the nation’s history. The Congressional Budget Office projects that the potential labor force will grow a mere 0.3 percent to 0.4 percent annually for the remainder of the 2020s; the size of the work force rose an average of 0.8 percent a year from 2000 to 2020.

An important question for the overall economy is whether employers will be able to create conditions attractive enough to coax back in some of the millions of working-age adults not currently part of the labor force. Depending on your view of the causes, the end of expanded pandemic-era jobless benefits might also have an effect. Some businesses may need to raise prices or retool how they operate; others may be forced to close entirely.

Higher wages are part of the story. The jobs report issued on Friday showed that average hourly earnings for nonmanagerial workers were 1.3 percent higher in May than two months earlier. Other than in a brief period of statistical distortions early in the pandemic, that is the strongest two-month gain since 1983.

But wages alone aren’t enough, and firms seem to be finding it in their own best interest to seek out workers across all strata of society, to the benefit of people who have missed out on opportunity in the last few decades.

“I’ve been doing this a long time and have never felt more excited and more optimistic about the level of creative investment on this issue,” said Bertina Ceccarelli, chief executive of NPower, a nonprofit aimed at helping military veterans and disadvantaged young adults start tech industry careers. “It’s an explosive moment right now.”

In effect, an entire generation of managers that came of age in an era of abundant workers is being forced to learn how to operate amid labor scarcity. That means different things for different companies and workers — and often involves strategies more elaborate than simply paying a signing bonus or a higher hourly wage.

At the high end of the labor market, that can mean workers are more emboldened to leave a job if employers are insufficiently flexible on issues like working from home.

#### No internal link to stagflation.

Elyse Dorsey et. al. 20. Adjunct Professor, Antonin Scalia Law School at George Mason University. Geoffrey A. Manne. President and founder of the International Center for Law and Economics (ICLE). Jan M. Rybnicek. Attorney at Freshfields Bruckhaus Deringer in Washington, D.C. Kristian Stout. ICLE’s Director of Innovation Policy. Joshua Wright. Executive Director of the Global Antitrust Institute. CONSUMER WELFARE & THE RULE OF LAW: THE CASE AGAINST THE NEW POPULIST ANTITRUST MOVEMENT. Pepperdine Law Review. 05-01-2020. Pg. 902-905

Populist antitrust supporters further note that income inequality in the United States has increased dramatically in recent decades, and proffer that lax antitrust enforcement is (to varying degrees) to blame.246 The general intuition here is fairly easily stated: lenient antitrust enforcement allows firms to obtain market power, which allows them to reduce output, raise prices, and generate monopoly profits—all of which enriches shareholders.247 Shareholders are, by and large, in the top percentage of wealth and income distribution, so these increasing returns increase the wealth of the wealthiest and, thus, inequality.248

Imbedded in this theory are a couple of key assumptions, both of which can be empirically tested. First, that inequality is increasing.249 The evidence here suggests inequality is likely increasing, though the magnitude of this increase is probably overstated. Second, that increasing antitrust enforcement would reverse this trend.250 On the proffered causal link between antitrust enforcement and inequality, there is, so far, a notable dearth of empirical support or development.

First, consider the evidence on inequality trends.251 Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for United States incomes over the last 50 years, which appears to show a steep increase in inequality.252 Examining the ratio of the share of United States income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.253

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.254 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.255 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5.0 in 1995, 5.2 in 2004, and 5.6 in 2012.256 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between consumption and well-being.”257 Consumption trends would also seem to be relevant when considering antitrust enforcement efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a muted rate.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially more-accurate measures of income and welfare, however, suggest this trend is not as significant as populists claim.258 So, the first assumption in this particular populist theory appears to be valid, if often overstated.259 That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

## Federalism

### Turn---1NC

#### *Parker*’s exemptions from federal antitrust law derive from the principle of federalism.

Jason Kornmehl 15. Law Clerk, Maryland Court of Appeals. State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation. Seattle University Law Review. 2015. 39(1): 8-9

The Parker decision left open the issue of whether the conduct of private actors and subordinate government entities could be exempt from federal antitrust laws based on the state action doctrine.46 However, in a series of cases in the 1980s, the Supreme Court found that private actors and certain subordinate government entities could rely on the state action doctrine to shield their conduct from federal antitrust scrutiny. In California Retail Liquor Dealers Ass’n v. Midcal Aluminum, the Court established a two-part test for determining whether private actors could take advantage of Parker immunity.47 The unanimous Court stated that (1) the challenged restraint must be “one clearly articulated and affirmatively expressed as state policy[,]” and (2) “the policy must be ‘actively supervised’ by the State itself.”48 Because actions of a state legislature and a state’s highest court acting in a legislative capacity are treated as the action of a state itself, the state action doctrine applies to these entities without a need to establish the clear articulation and active supervision requirements of Midcal. 49 Midcal’s two-part test has long supplied the framework within which courts have determined the availability of the state action defense to private parties.50 However, actions taken by subordinate government entities such as counties and municipalities may also be entitled to Parker immunity. Subordinate government entities are not entitled to the same protection from the federal antitrust laws as a state itself, and thus also fall under the Midcal framework.51 However, municipalities and local government entities need only satisfy Midcal’s first prong for their conduct to be exempt from federal antitrust laws under the state action doctrine.52 The state action doctrine is a strong weapon, or perhaps more appropriately, a shield, in the arsenal of antitrust defendants.53 Because the state action doctrine “derive[s] from principles of federalism and other constitutional considerations,”54 and is a long-term priority of the Federal Trade Commission,55 it is an important exemption that governmental and private entities will continue to invoke in antitrust litigation.

#### Parker Immunity threads the needle between federalism and competition---changes implicate federalism.

Jason Kornmehl 15. Law Clerk, Maryland Court of Appeals. State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation. Seattle University Law Review. 2015. 39(1): 31-32

CONCLUSION The state action doctrine is an important area of antitrust law. Not only is the doctrine conceptually interesting because it implicates federalism and state sovereignty issues, but it also has great practical impact. A fairly significant number of antitrust disputes involve Parker immuni- ty questions.211 One of the areas of confusion over the scope of the state action doctrine is whether an order denying a motion to dismiss an antitrust claim under the state action doctrine is immediately appealable as a collateral order. The profound circuit split on this complex question demonstrates the significance of this issue in antitrust appellate practice. Because the state action doctrine’s parentage derives from the same principles of federalism and state sovereignty as the Eleventh Amendment,212 the best understanding of the doctrine is as an immunity when applied to governmental defendants that are considered part the of the state itself. On the other hand, the state action doctrine does not function as an immunity when defendants must satisfy the Midcal framework (i.e., government entities that are not considered part of the state and private parties). Finally, allowing the immediate appeal of orders denying Parker immunity to governmental entities that are part of the state will not undermine the final judgment rule’s goal of ensuring efficient judicial administration. The state action doctrine is essentially “an attempt to resolve the tension between federalism concepts favoring states’ rights and national policies favoring competition.”213 This Article’s conclusion—that some governmental defendants should have the right of an immediate appeal while denying an immediate appeal to other governmental defendants and private parties—is in accord with the state action doctrine’s delicate balancing act.

### Grid Resilient---1NC

#### No widespread blackouts – That's not how the grid works.

Koerth 18 – Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", *FiveThirtyEight*, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

#### The grid is strong now---energy efficiency, new tech, and cycle generation.

Krysti Shallenberger 17, Utility Dive associate editor, 1-5-2017, "Predictions 2017: 8 sector insiders on what's next for power markets and regulation," Utility Dive, http://www.utilitydive.com/news/predictions-2017-8-sector-insiders-on-whats-next-for-power-markets-and-re/433358/

The traditional drivers of infrastructure additions were load growth and connecting distant generation sources to population centers. However, that has changed. Load growth is negligible in many areas. (At PJM we forecast peak load growth of less than half of one percent per year.) At the same time, more efficient technology, specifically energy efficiency and new natural gas combined cycle generation closer to load centers, has changed power flow patterns, which reduces the need for additional large-scale transmission expansion projects. The reduction in larger scale projects has allowed focus to be shifted to resolving aging infrastructure concerns on lower-voltage facilities. More efficient technologies, the capacity performance construct and upgrades to the system have made the grid increasingly robust and resilient. Last summer, for example, was the first time PJM met a peak demand of more than 150,000 megawatts without invoking emergency procedures and while net exporting power.

### Warming

#### Infrastructure solves---includes investments in climate change mitigation strategies.

#### States solve warming alone now through sustaining international networks and norms.

Sharmila Murthy 19. Associate Professor of Law Suffolk University Law School. “States and Cities As 'Norm Sustainers': A Role for Subnational Actors in the Paris Agreement on Climate Change” *Virginia Environmental Law Journal*, Vol. 37:1. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3308613

The Clean Power Plan (“CPP”) illustrates how states can act as norm sustainers by showing that policies to address climate change are feasible. The CPP had been a key mechanism for the Obama administration to achieve the U.S. NDC of an “economy-wide target of reducing its greenhouse gas emissions by twenty-six to twenty-eight percent below its 2005 level in 2025 and to make best efforts to reduce its emissions by twenty-eight percent.”275 The CPP required states to cut pollution from existing power plants, which were the largest source of greenhouse gas emissions in the United States.276 It was not crafted out of thin air. Rather, state policies laid an important foundation for the EPA’s determination of the appropriate technological and compliance options in the CPP.277 Notably, many of those practices developed at time when the United States refused to be a party to the Kyoto Protocol and when there was a void in leadership on climate action at the national level.278 When President Obama came into office, the EPA was able to justify the design of the CPP based on what it had observed in states and among electric utilities.279 Although the EPA under the Trump administration is replacing the CPP with its own rule,280 many of the practices on which the CPP was premised are still in place.281 Thus, even when the national government rejects global norms around climate change, subnational action keeps those norms alive so that when the national government is ready to engage again, it can build on these efforts and take them to the international stage.

The concept of subnational norm sustaining builds on the extensive scholarship on cooperative federalism.282 State actors can take action in areas where there is concurrent federal jurisdictions and, in some instances, influence the direction of national policies.283 In contrast to the traditional cooperative federalism model of environmental regulation, where states largely implement standards set by the national government, climate action has largely been bottom-up due to the void in federal climate policy.284 Such dynamism is important because environmental law involves scientific uncertainties and the need for technical and physical solutions that continually evolve.285

Buzbee observes that this fluidity is the benefit of the regulatory concurrence at the heart of “federalism hedging,” which he defines as “the retention of potential regulatory roles for both federal and state regulators.”286 He argues that “[n]o single governmental actor can destroy the complex web of regulation that catalyzed that progress, nor can any single governmental actor unsettle deeply entrenched shifts in energy production and resulting pollution reductions.”287 Due to the dynamic nature of cooperative federalism, subnational actors in the United States have climate policies that now reverberate up to the international level, consistent with Koh’s theory of transnational legal process.288 Moreover, “federalism hedging” in the United States creates an environment where states and cities can function as norm sustainers. Even when the national government explicitly rejects a national policy, such as the Clean Power Plan, and an international agreement, such as the Paris Agreement, state and local climate practices that are consistent with international norms remain intact.

Subnational norm sustaining simply requires states and cities to enact laws and policies that are consistent with a global norm, i.e. the need to address climate change. Norm sustaining does not require innovating new ideas. In this respect, it is consistent Engel’s observation that, contrary to conventional wisdom, states in the climate context have been risk-averse with respect to experimentation and have not necessarily been “laboratories of innovation.”289 For example, many aspects of state initiatives—such as “greenhouse gas emission targets, reporting and registries, renewable portfolio standards, emissions caps for electric utility plants, clean car standards, regional greenhouse gas cap-and-trade regime and low-carbon fuel standards—are not really new, but instead have been fixtures of federal environmental policies for decades.”290 She argues that, nevertheless, U.S. states play a crucial role as “scale innovators” when they adapt climate policies that have previously been used at the national or international level.291 Norm sustaining builds on this idea by illustrating how such actions continue even when there is a dearth of national leadership on climate change.

# 2NC

## Cap K

### Framework Top---2NC

#### 1. Scenario Analysis and Education. Question of what we should do carries presuppositions about political subjectivity---if those are wrong, our policies will be too, so they can’t perm away our links. It means they can’t access the case until they’ve defended their ideology.

Mathieu HILGERS, Laboratory for Contemporary Anthropology, Université Libre de Bruxelles, and Centre for Urban and Community Research, Goldsmiths, University of London, 13 [“Embodying neoliberalism: thoughts and responses to critics,” *Social Anthropology*, Vol. 21, No. 1, February 2013, p. 75-89, Accessed Online through Emory Libraries]

The implementation of neoliberalism goes far beyond the mere appearance of its policies. It cannot be reduced to the application of a programme or to institutional changes. This implementation is deployed within a triangle constituted by policies, institutions and dispositions. This last component has remained at the margins of our debate. If we wish to grasp the depth of the changes that neoliberalism causes, we cannot neglect its effects on systems of dispositions. To analyse this impact, it is necessary to describe the symbolic operations that give rise to government-enabling representations as well as to categories that support neoliberalism and are propagated by it. This task requires accounting for the historicity of the spaces in which policies are put into action, the intentional constructions but also involuntary historical formations in which they become entangled, and the transactions, negotiations, associations, working misunderstandings and chains of translation that give them their flexibility and support their deployment.

Neoliberalism is embodied in the agents and representations through which it is put into action. Through a historical process, the dispositions that it generates become, as Bourdieu would say, durable and transposable, as well as increasingly autonomous from their initial conditions of production. As such, when these conditions disappear or transform, or when policies are modified or abandoned, some of them spread into other social spaces and contexts and take on new meanings. Therein lies the importance of broadening the notion of ‘implementation’, so that we may appreciate the role of culture in the dynamics of neoliberal expansion. It is precisely (but not only) because of the embodiment of neoliberalism emphasized in this paper that at the moment we are nowhere near the end of the neoliberal era. Thus I arrive, by a different path, at the same observation that Kalb (2012) formulated in this debate: today it is capitalism that is in crisis, not neoliberalism.

In some parts of the world, information that helps people to stabilize their perceptions, practices and activities is mainly produced within a neoliberal context, forms and procedures. The figures, statistics, norms, audits and discourses that I evoke in this paper are fashioned by a constellation of institutions; they condition, train and shape a mental and practical space. They impact the way in which one conceives and carries out research. Indeed, academia is not outside of this neoliberal world; on the contrary, it is a centre of development and support for neoliberalism. While many academics are critical of neoliberalism, this does not mean that they have a permanent deconstructionist relation to the world and to themselves. In many parts of academia, a neoliberal way of functioning has become common sense. If neoliberalism is so present in our mind and in the way in which academia is designed and works today, it appears more than necessary for researchers to consider how this shapes their relation to production of knowledge.

If we wish to avoid the eviction of critical perspectives in this time of crisis, if we hope to have some chance to think within but beyond the neoliberal age, if we want to develop alternatives and different horizons, one of the first things to do is to decolonize our mind by objectifying our own neoliberal dispositions. The reflexive return to the tools of analysis is thus ‘not an epistemological scruple but an indispensable pre-condition of scientific knowledge of the object’ (Bourdieu 1984: 94), if we are to prevent the object and its definition from being dictated to the researcher by non-scientific logics, such as the necessity of being visible and marketable in the academy. To achieve a break with neoliberal common sense, anthropologists could follow Bourdieu (2003) in his will to engage in a ‘participant objectivation’.14 It is clearly this kind of objectivation even if not phrased in such terms that has led some researchers to call for a radical change in the academy, supported by new arguments and put into practice through the initiation of a ‘slow science’ movement.15 In some places, academia is still a space of critiques and alternatives.

#### It doesn’t reflect pragmatic reality. Neg gets the equal right to test desirability, not feasibility.

Paul Mason 7-17-15. Writer of Live Working or Die Fighting: How the Working Class Went Global and [PostCapitalism: A Guide to our Future](https://en.wikipedia.org/wiki/PostCapitalism:_A_Guide_to_our_Future). Culture and Digital Editor of Channel 4 News. Visiting Professor at the University of Wolverhampton. Bachelors in Music and Politics from the University of Sheffield. "The end of capitalism has begun," Guardian, https://www.theguardian.com/books/2015/jul/17/postcapitalism-end-of-capitalism-begun

The power of imagination will become critical. In an information society, no thought, debate or dream is wasted – whether conceived in a tent camp, prison cell or the table football space of a startup company. As with virtual manufacturing, in the transition to postcapitalism the work done at the design stage can reduce mistakes in the implementation stage. And the design of the postcapitalist world, as with software, can be modular. Different people can work on it in different places, at different speeds, with relative autonomy from each other. If I could summon one thing into existence for free it would be a global institution that modelled capitalism correctly: an open source model of the whole economy; official, grey and black. Every experiment run through it would enrich it; it would be open source and with as many datapoints as the most complex climate models. The main contradiction today is between the possibility of free, abundant goods and information; and a system of monopolies, banks and governments trying to keep things private, scarce and commercial. Everything comes down to the struggle between the network and the hierarchy: between old forms of society moulded around capitalism and new forms of society that prefigure what comes next. ... Is it utopian to believe we’re on the verge of an evolution beyond capitalism? We live in a world in which gay men and women can marry, and in which contraception has, within the space of 50 years, made the average working-class woman freer than the craziest libertine of the Bloomsbury era. Why do we, then, find it so hard to imagine economic freedom? It is the elites, cut off in their dark-limo world, whose project looks forlorn It is the elites – cut off in their dark-limo world – whose project looks as forlorn as that of the millennial sects of the 19th century. The democracy of riot squads, corrupt politicians, magnate-controlled newspapers and the surveillance state looks as phoney and fragile as East Germany did 30 years ago. All readings of human history have to allow for the possibility of a negative outcome. It haunts us in the zombie movie, the disaster movie, in the post-apocalytic wasteland of films such as [*The Road*](https://www.theguardian.com/film/movie/131971/road) or [*Elysium*](https://www.theguardian.com/film/2013/aug/22/elysium-review). But why should we not form a picture of the ideal life, built out of abundant information, non-hierarchical work and the dissociation of work from wages? Millions of people are beginning to realise they have been sold a dream at odds with what reality can deliver. Their response is anger – and retreat towards national forms of capitalism that can only tear the world apart. Watching these emerge, from the pro-Grexit left factions in Syriza to the [Front National](https://www.theguardian.com/world/marine-le-pen) and the isolationism of the American right has been like watching the nightmares we had during the [Lehman Brothers](https://www.theguardian.com/business/lehmanbrothers) crisis come true. We need more than just a bunch of utopian dreams and small-scale horizontal projects. We need a project based on reason, evidence and testable designs, that cuts with the grain of history and is sustainable by the planet. And we need to get on with it.

#### 4. Invert your standard for solvency.

Eugene McCarraher 19. Associate Professor of Humanities at Villanova University, PhD in US Cultural and Intellectual History from Rutgers University; The Enchantments of Mammon: How Capitalism Became the Religion of Modernity, 11/12/19, p. 15-18

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience. The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25 Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26 Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27 Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

### AT: Perm Do Both

#### 3. Any combination poisons the alt.

William Curran 16. Editor for the Antitrust Bulletin. Commitment and betrayal: Contradictions in American democracy, capitalism, and antitrust laws. Antitrust Bulletin. 2016. 61(2): 246

Scholars now link antitrust with distributional values. 11 Professor Anthony B. Atkinson wants antitrust to value the individual,1 12 recognizing as Hand did in Alcoa1 13 that "among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them." 1 14 And it is the individual-rich and poor, but especially the poor-whom Atkinson wants to protect from the inequities of the marketplace.115 Atkinson sees as Senator John Sherman did in 1890 that the "problems that may disturb [the] social order ... none is more threatening than the inequality of condition of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade to break down competition." 11 6 Sherman's and Hand's worries were certainly not Bork's. Hand said it best in Alcoa, "[W]e have been speaking only of the economic reasons which forbid monopoly ... [but] there are others, based upon the belief that great industrial consolidations are inherently undesirable, regardless of their economic results.",1 1 7 Bork-regardless of destructive results to democracy-would never find efficient economic results inherently undesirable. Bork would likely find democracy a "cornucopia of social values, all rather vague and undefined but infinitely attractive."iiS A definition that was surely meant to disparage, fails. What makes democracy attractive is its socially related values. 11 9 What makes it infinitely attractive are its regenerative capacities and potential for self-definition. 120 Bork blocked democracy's values so as not to tempt liberal judges. He worried needlessly. An antitrust solution to wealth's severe inequality is simply not plausible. 121 Antitrust has always been the heart of capitalism's ideology. 122 In truth, antitrust's distribution of wealth for the wealthy is more than ideology-it is heartless reality. So was Bork right? Are the fates of capitalism and antitrust intertwined? 123 And if antitrust were repealed? Professor Atkinson wants antitrust saved and used for citizens.124 But like Professors Stiglitz, Krugman, and Reich, he has fallen headfirst into antitrust's heartless ideological trap. And like the other three he would resurrect TR's trust-busting for the twenty-first century. Piketty avoids ideological traps. He learns the facts of history-unencumbered by ideologies like Bork's-and has an unobstructed vision 125 of the unequal and democratically destructive wealth of capitalism. Bork's antitrust is the wrong policy tool for a nation presumed to be dedicated to serving citizens equitably. 126

### AT: Alt Fails

#### 2. Fossil fuels are not inevitable. Paradigm shift now towards the alt.

CJ Atkins 21. Managing Editor at People’s World with a Ph.D. in political science from York University in Toronto. Neoliberalism’s in trouble: A Marxist look at the American Rescue Act. People's World. 3-11-2021. https://www.peoplesworld.org/article/neoliberalisms-in-trouble-a-marxist-look-at-the-american-rescue-act/

Change from below Many analysts are taking notice of this paradigm change. Paul McCulley, a business professor at Georgetown, told the New York Times earlier this week, “Having the tools of economic stabilization work a whole lot more through the fiscal channel and a whole lot less through the monetary channel is a profound, pro-democracy policy mix.” In plainer language: It’s better to have elected representatives rather than unelected bankers making the call on how public money is spent. Some media commentators are seeing the shift, but they’re missing the real reasons for why it’s happening. Times opinion writer Neil Irwin, for instance, characterizes it as a battle between “pointy-headed technocrats” and lawmakers, or as the headline of his article earlier this week put it, “Move over, nerds. It’s the politicians’ economy now.” Without the insights that come from a class analysis of the situation, Irwin and other commentators in the bourgeois press continue to look only at the differences among those at the top of society to explain social change. The truth, however, is that the pressure now being applied to neoliberal ideology is the result of class struggle from below. Since the last recession, working-class action has been steadily building and gaining strength. The first sparks came in the Occupy Wall Street movement that emerged in the wake of the financial crisis. There were the two Bernie Sanders campaigns for president as well as that of Elizabeth Warren, which inserted explicitly social democratic demands like Medicare for All into public conversation. The trade union movement has begun to reverse its decades-long decline, with new organizing efforts like the campaign by Alabama Amazon workers showing that more and more workers are looking to collective action as the way to improve their lives. The Black Lives Matter national uprising, with its demand to defund policing and militarization and redirect funds toward human needs, has melded together the fights to end racism and economic inequality. Opinion polls have shown interest in the ideas of socialism gaining steam for several years already, showing up also in the fact that left-wing organizations like Democratic Socialists of America and the Communist Party USA have seen explosive growth. The 2018 and 2020 elections were further proof, as the caucus of progressive legislators swelled. Bold women of color leaders like Reps. Alexandria Ocasio-Cortez, Ayanna Pressley, Ilhan Omar, and Pramila Jayapal now lead the charge in Washington on everything from the Green New Deal to the Fight for $15 and more. The mass death and destruction experienced in the past year because of coronavirus have only accelerated the trend of people questioning the status quo and looking for alternatives. The pandemic has accelerated class struggle trends that were already becoming apparent. Increasingly, millions are questioning capitalism, as shown by this message spray-painted onto a wall in Toronto. | C.J. Atkins / People’s World All this simmering of organized working-class activity and political growth—driven by the material conditions workers and oppressed people find themselves living in—is having an impact at the national level of policy and debate. In Marxist terms, changes in the economic foundation of society are affecting mass consciousness and therefore prodding change in the superstructure—the legal, political, and philosophical ideas of our times. Old ideologies like neoliberal capitalism are under pressure from new ones arising out of class struggle. Those new ideas are not yet fully formed, though, and the forces pushing them are not yet strong enough to assert their power at all times. The new is still in conflict with the old, and the outcomes are uneven. Allies (like politicians) will at times waver. Victories will be real, but incomplete (like the dropping of the $15 minimum wage from the ARA). Defeats are not unavoidable. As Frederick Engels wrote, “History makes itself in such a way that the final result always arises from conflicts…there are innumerable intersecting forces.” So the American Rescue Plan, despite whatever we didn’t get out of it, is a big win for the working class. The people have been demanding a change in how our economy operates and whom it benefits. Organization and unity are making it happen—the 2020 election was proof of that as well.

#### 4. It’s succeeding now.

Spencer Bokat-Lindell 9-16. Bachelor of Arts in French at Yale University. Member of the Yale Journalism Initiative. Staff editor in the Opinion section for the New York Times. Past Senior Writer and Co-Editor at [Katie Couric Media](https://www.linkedin.com/company/katie-couric-media?trk=public_profile_experience-item_profile-section-card_subtitle-click) Previous editor at The Paris Review and Axios."Do We Need to Shrink the Economy to Stop Climate Change?" New York Times. 9-16-2021. <https://www.nytimes.com/2021/09/16/opinion/degrowth-cllimate-change.html>

Forgetting about growth

At the moment, degrowth has no mass constituency. But some of its animating ideas are nonetheless exerting an influence on political economic thought — particularly the critique of G.D.P. growth as the lodestar of human progress.

“Even within mainstream economics, the growth orthodoxy is being challenged, and not merely because of a heightened awareness of environmental perils,” John Cassidy wrote in The New Yorker last year. “After a century in which G.D.P. per person has gone up more than sixfold in the United States, a vigorous debate has arisen about the feasibility and wisdom of creating and consuming ever more stuff, year after year.”

What’s the alternative? Kate Raworth, an English economist, has identified one option: “doughnut economics.” In Raworth’s view, 21st-century economies should abandon growth for growth’s sake and make it their goal to reach the sweet spot — or the doughnut — between the “social foundation,” where everyone has what they need to live a good life, and the “environmental ceiling.”

“The doughnut model doesn’t proscribe all economic growth or development,” Ciara Nugent explains in Time. “But that economic growth needs to be viewed as a means to reach social goals within ecological limits, she says, and not as an indicator of success in itself, or a goal for rich countries.”

Raworth’s ideas have had real-world impact: Last year, during the first wave of the pandemic, Amsterdam’s city government announced it would aim to recover from the crisis by adopting the precepts of “doughnut economics.” A year before that, Prime Minister Jacinda Ardern of New Zealand announced her country would prioritize its residents’ welfare and happiness over G.D.P. growth.

Delighted to hear that Jacinda Ardern is reading Doughnut Economics and that it reinforces her existing views. There is another economy waiting and it's starting to be made...

Even in the United States, which has embraced no such policy, G.D.P. growth has slowed in the past two decades, largely because of falling birthrates and a switch in spending patterns from goods to services.

That hasn’t solved the problem of America’s addiction to fossil fuels, of course. “Yet the sorts of policies on offer from degrowth advocates — like universal basic services and shorter working hours — could help address some of the long-standing ills now afflicting a wide range of economies,” Kate Aronoff writes in The New Republic. “Rather than chasing an increasingly far-off goal by trying to coax forth elusive corporate investment with giveaways, governments could start planning for what a fairer lower growth, lower carbon future might look like.”

### AT: Monibot

#### 3. Monibot votes neg.

Monbiot 19 (George Monbiot, citing Erica Chenoweth - the Berthold Beitz Professor in Human Rights and International Affairs at Harvard Kennedy School, Foreign Policy magazine ranked her among the Top 100 Global Thinkers in 2013 for her efforts to promote the empirical study of civil resistance, she received the Karl Deutsch Award, which the International Studies Association gives annually to the scholar under the age of 40 who has made the greatest impact on the field of international politics or peace research. And together with Maria J. Stephan, she won the 2013 Grawemeyer Award for Ideas Improving World Order, which is presented annually in recognition of outstanding proposals for creating a more just and peaceful world order. Their book, Why Civil Resistance Works, also won the 2012 Woodrow Wilson Foundation Award, given annually by the American Political Science Association in recognition of the best book on government, politics, or international affairs published in the U.S. in the previous calendar year. 4-1-2019, "Only rebellion will prevent an ecological apocalypse," Guardian, <https://www.theguardian.com/commentisfree/2019/apr/15/rebellion-prevent-ecological-apocalypse-civil-disobedience> accessed: 8-29-2019) //bp

As the environmental crisis accelerates, and as protest movements like YouthStrike4Climate and Extinction Rebellion make it harder not to see what we face, people discover more inventive means of shutting their eyes and shedding responsibility. Underlying these excuses is a deep-rooted belief that if we really are in trouble, someone somewhere will come to our rescue: “they” won’t let it happen. But there is no they, just us. The political class, as anyone who has followed its progress over the past three years can surely now see, is chaotic, unwilling and, in isolation, strategically incapable of addressing even short-term crises, let alone a vast existential predicament. Yet a widespread and wilful naivety prevails: the belief that voting is the only political action required to change a system. Unless it is accompanied by the concentrated power of protest – articulating precise demands and creating space in which new political factions can grow – voting, while essential, remains a blunt and feeble instrument. The media, with a few exceptions, is actively hostile. Even when broadcasters cover these issues, they carefully avoid any mention of power, talking about environmental collapse as if it is driven by mysterious, passive forces, and proposing microscopic fixes for vast structural problems. The BBC’s Blue Planet Live series exemplified this tendency. Those who govern the nation and shape public discourse cannot be trusted with the preservation of life on Earth. There is no benign authority preserving us from harm. No one is coming to save us. None of us can justifiably avoid the call to come together to save ourselves. I see despair as another variety of disavowal. By throwing up our hands about the calamities that could one day afflict us, we disguise and distance them, converting concrete choices into indecipherable dread. We might relieve ourselves of moral agency by claiming that it’s already too late to act, but in doing so we condemn others to destitution or death. Catastrophe afflicts people now and, unlike those in the rich world who can still afford to wallow in despair, they are forced to respond in practical ways. In Mozambique, Zimbabwe and Malawi, devastated by Cyclone Idai, in Syria, Libya and Yemen, where climate chaos has contributed to civil war, in Guatemala, Honduras and El Salvador,, where crop failure, drought and the collapse of fisheries have driven people from their homes, despair is not an option. Our inaction has forced them into action, as they respond to terrifying circumstances caused primarily by the rich world’s consumption. The Christians are right: despair is a sin. As the author Jeremy Lent points out in a recent essay, it is almost certainly too late to save some of the world’s great living wonders, such as coral reefs and monarch butterflies. It might also be too late to prevent many of the world’s most vulnerable people from losing their homes. But, he argues, with every increment of global heating, with every rise in material resource consumption, we will have to accept still greater losses, many of which can still be prevented through radical transformation. Every nonlinear transformation in history has taken people by surprise. As Alexei Yurchak explains in his book about the collapse of the Soviet Union – Everything Was Forever, Until It Was No More – systems look immutable until they suddenly disintegrate. As soon as they do, the disintegration retrospectively looks inevitable. Our system – characterised by perpetual economic growth on a planet that is not growing – will inevitably implode. The only question is whether the transformation is planned or unplanned. Our task is to ensure it is planned, and fast. We need to conceive and build a new system based on the principle that every generation, everywhere has an equal right to enjoy natural wealth. This is less daunting than we might imagine. As Erica Chenoweth’s historical research reveals, for a peaceful mass movement to succeed, a maximum of 3.5% of the population needs to mobilise. Humans are ultra-social mammals, constantly if subliminally aware of shifting social currents. Once we perceive that the status quo has changed, we flip suddenly from support for one state of being to support for another. When a committed and vocal 3.5% unites behind the demand for a new system, the social avalanche that follows becomes irresistible. Giving up before we have reached this threshold is worse than despair: it is defeatism. Today, Extinction Rebellion takes to streets around the world in defence of our life-support systems. Through daring, disruptive, nonviolent action, it forces our environmental predicament on to the political agenda. Who are these people? Another “they”, who might rescue us from our follies? The success of this mobilisation depends on us. It will reach the critical threshold only if enough of us cast aside denial and despair, and join this exuberant, proliferating movement. The time for excuses is over. The struggle to overthrow our life-denying system has begun.

### Boom and Bust

#### Boom & Bust.

Alan Maass 21. Communications staff for Rutgers AAUP-AFT. Marxism Shows Us How Our Problems Are Connected. Jacobin. 1-5-2021. https://jacobinmag.com/2021/01/marxism-capital-socialism-capitalism-book-review

When Things Fall Apart

Marxist economics explains not only how capitalism works but why it regularly doesn’t — during the periodic economic busts that inevitably follow the booms. As Marx and Engels wrote:

Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed. And why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce.

Of course, in a world where billions go without enough food, there’s no such thing as “too much means of subsistence.” There’s only too much from the point of view of the capitalists — too much to sell their products at an acceptable profit.

Thier introduces the chapters on capitalist crisis by unpacking a long quotation from Engels that ends: “The contradiction between socialized production and capitalistic appropriation is reproduced as the antagonism between the organization of production in the single factory and the anarchy of production in society as a whole.”

Under capitalism, production within workplaces is generally highly regimented, but the economy as a whole is a free-for-all. Businesses make their investment decisions behind closed doors, each hoping to get a leg up on the competition — by introducing the most popular model, the new product, the next trend. Success means a greater share of the market and therefore more profits.

All the important questions for society as a whole — how much food should be produced, how many homes to build, what kind of drugs to research and manufacture, how to generate electricity — are decided by the free market.

In economic good times, success seems contagious. Companies make ambitious investments, produce more and more, and watch the money roll in. But when enough companies jump in, the market gets saturated, sales slump, debts grow, and the record profits start to sink. The effects spread from part of the economy to the next, as Thier explains, using the example of oil:

If refineries sit idle because there is an overproduction of oil, the workers are laid off, and the creditors, who financed the investment, are dragged down as well. But as future oil extraction and refining projects are pulled back, so too is demand for the raw materials (steel, concrete, plastics, electricity, etc.) and engineering necessary for the production of oil rigs, pipelines, and so on. The construction business and service and retail companies, which had benefited from the springing up of oil boomtowns, suffer as well.

Because of the complexity of the international capitalist economy, the boom-slump roller-coaster ride can look and feel different each time around. Thier devotes a chapter to analyzing the crash last time: the Great Recession of 2008–9. She explains why and how the parasitical realm of banking and finance was the detonator of this slump but looks beyond popular left explanations about “financialization” to reveal the underlying crisis of global overproduction.

Among Marxist economics writers, there are some disagreements about the details here, specifically about “which aspects of Marx’s writing — falling profitability, overproduction (or in some cases, underproduction), disproportionality among branches, the role of credit — are emphasized and how these pieces fit together,” Thier writes.

In her account, Thier tends to stress overproduction, to the disappointment of those who emphasize falling profit rates. This focus on overproduction crucially emphasizes how an organic mechanism of capitalism — inevitable in a system driven by exchange, exploitation, and competition — repeatedly causes crisis.

Regardless of their ideology or morality (or lack thereof), capitalists are inevitably driven to reduce costs, they inevitably see an advantage in producing more for less, and this inevitably leads to frantic overproduction that undermines profitability and ultimately slams the economy into reverse.

In other words, capitalism stops working not because of a mistake or failed policy, but because it’s been working the way it’s supposed to. As Thier writes:

Competition is the mainstay of capitalism. It can’t be made friendlier or softer because it requires an accumulation of capital at any cost, in order to get ahead or get left behind.… These same processes of accumulation necessarily lead to contradictions that threaten the very profits that capitalists seek. Every contradiction for capitalism is both a great hazard to our lives — since we are made to pay the price — and also an important crack in the system. Every periodic crisis is a potential point around which to organize.

### Mineral Cycles

#### Mineral cycles---that’s Allinson---copper, lithium, manganese hit bottlenecks.

Nafeez Ahmed 20 M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

### AT: Koch

#### Koch votes neg.

Max Koch & Hubert Buch-Hansen 20. Max Koch is a Professor in the School of Social Work at Lund University. Visiting Scholar / Guest Professor at Universidad Complutense de Madrid, Erasmus University Rotterdam, Glasgow University, *Programa de Economía del Trabajo (*Santiago de Chile), Lund University (prior to my current employment), GESIS - Leibniz Institute of the Social Sciences in Cologne, University of Edinburgh and at the Institute for Advanced Sustainability Studies in Potsdam. Buch Hansen is a Professor of Business at the Copenhagen School of Business. “In search of a political economy of the postgrowth era.” August 25, 2020. DOI: 10.1080/14747731.2020.1807837

Conclusion In times where planetary boundaries are reached or crossed, mainstream political economy choses to either completely ignore the environment or reproduce the myth of green growth. If political economy intends to contribute towards re-embedding production and consumption patterns in environmental limits and indeed a corresponding ecological and social transformation, we have here argued that it needs to abandon its anthropocentric ontology and reposition itself in the postgrowth context. This presupposes a break with mainstream economics and an amalgamation with heterodox approaches such as ecological economics, ecofeminism and degrowth. Within the emerging and diverse political economy of and for the postgrowth era, the Marxian tradition, with its simultaneous focus on historically specific economic categories, social relations and modes of consciousness, is capable of playing a constructive part. And some of the concepts of contemporary critical political economy approaches such as regulation theory may give a hint into the further particulars of an analysis of this new epoch. Like growth economies, postgrowth economies will have institutions that may be understood in terms of ‘institutional forms’. We discussed this further at the example of the state. In our reading, a societal mobilization beyond, through and by the state would be necessary to push through an eco-social agenda with the potential of initiating degrowth. A range of corresponding policies and policy instruments have been identified including proposals for work sharing, minimum income schemes, caps on wealth and income, time-banks or job guarantees. Indeed, overall, there is no lack of more or less developed policy suggestions to which activists may turn. The problem continues to be that these are often fragmented and in need of being unified in a coherent strategy for the social and ecological transformation of the rich countries. It is encouraging that this issue is increasingly reflected in recent contributions that explore the synergy potential of single policies in terms of ‘recipes’ for a degrowth transition (Parrique, 2019) or ‘virtuous circles of sustainable welfare’ (Hirvilammi, 2020). Contributing to advance this agenda could be an entry point for political economists wishing to move beyond narrow anthropocentric perspectives to generate knowledge relevant for the postgrowth era. Whereas mainstream economics by means of its theory form and policy recommendations actively contributes to obstruct the economic and social transformations urgently needed to halt the climate and ecological crises, much political economy scholarship inadvertently plays a negative role by reproducing key ideas of mainstream economics – such as the notion that endless economic growth is unproblematic and desirable. If the discipline of political economy is to retain its relevance in the years to come, it needs to free and distance itself from this delusion.

## Fiscal

### Link Overview---2NC

#### Antitrust threatens to morph into economy-wide national policy.

Geoffrey A. Manne 18, President and Founder International Center for Law & Economics, “Why US Antitrust Law Should Not Emulate European Competition Policy,” ICLE, A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights, 12/19/18, https://www.judiciary.senate.gov/imo/media/doc/Manne%20Testimony.pdf

A. The European approach to Facebook and Google as cautionary tale

The question of whether technology platforms should be regulated (and why) is a contentious one. But whatever the political, economic, or social rationale impelling regulation, it remains a crucial question whether antitrust — or competition policy implemented through other laws — is the proper regulatory lever. Despite many claims that European authorities, through their competition laws, have adopted a “better” approach toward regulating technology platforms, these claims are generally based on an a priori preference for the outcome — not on a careful assessment of the underlying legal interpretation and its broader implications.

Indeed, Europe’s recent (and ongoing) experience with applying antitrust to both Facebook and Google presents a cautionary tale, not a model. As these examples show, moving towards a more open-ended enforcement of antitrust law (potentially converging with EU competition law) entails significant risks.

1. Facebook

The German Bundeskartellamt’s (Federal Cartel Office, or “FCO”) ongoing Facebook investigation, for which an infringement decision is said to be in the pipeline,28 is a stark case of the unprincipled extension of antitrust to attempt to reach a politically favored result. Indeed, in contrast to the European Commission — which at least often mentions economic analysis in its decisions — the FCO did not include any economic analysis or an attempt to gauge the actual effects of the complained-of conduct on users in its preliminary assessment. The FCO’s investigation thus bears all the traits of consumer protection enforcement (which, in Europe at least, tends to rely upon bright-line rules and little analysis of effects) rather than competition scrutiny (which nominally entails at least some inquiry into to the economic effect of firms’ conduct). The crux of the case concerns Facebook’s collection of users’ personal data outside its site — data that is then merged with Facebook’s user profiles.29 The German competition agency asserts in its preliminary assessment that Facebook (which it “assumes… is dominant”) is “abusing this dominant position by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user’s Facebook account.” 30 Note that the allegation on its face is not that Facebook forecloses other sites from amassing this external data, nor that its data collection amounts to anticompetitive harm (e.g., supracompetitive prices) to consumers. Rather, its allegation is that Facebook’s terms of service authorizing this data collection are simply not good for consumers, regardless of their acceptance of the terms, and thus constitute an abuse of dominance. “In the authority’s assessment, consumers must be given more control… and Facebook needs to provide [consumers] with suitable options to effectively limit this collection of data.” 31 The German competition authority is thus attempting to use its antitrust authority to impose on consumers (and Facebook) its idiosyncratic political preferences, in this case with regard to privacy. But turning voluntary contract terms that are not, in and of themselves, anticompetitive into an antitrust violation requires a remarkable and unprecedented sleight of hand. To begin with, the FCO asserts that this data — data collected from outside of Facebook — is “essential” for other social networks to compete with Facebook. But, despite asserting that its assessment is not based on how Facebook uses internal data collected from users’ interactions with Facebook directly, the FCO appears to convert this external data into an essentiality by condemning Facebook’s superior ability to combine it with its own internal data: Facebook has superior access to the personal data of its users and other competitionrelevant data. Because social networks are data-driven products, access to such data is an essential factor for competition in the market. The data are relevant for both[] the product design and the possibility to monetise the service. If other companies lack access to comparable data resources, this can be an additional barrier to market entry.32 The effect of this is to condemn Facebook’s success — and even, perhaps, to end up demanding that Facebook share its internal data — without saying so outright. The reference to “comparable data resources” is an unmistakable nod to the essential facilities doctrine, which can require access to a firm’s competition-relevant inputs where comparable inputs cannot be obtained elsewhere. Here the FCO appears to be asserting that competitors’ effective use of external data is thwarted if they do not have comparable internal data with which to combine it. But, of course, Facebook has this data only as a result of its success in bringing users to its platform. And it would be the height of unmoored antitrust enforcement to demand that other social networks, which do not operate through Facebook (in contrast, say, to advertisers, who do reach consumers via Facebook), must have access to Facebook’s internal data simply to give them a leg up in competing with a more successful rival. And yet, that is precisely what the authority seems to be suggesting — just indirectly by purporting to rest its claim on access to external data (which, like Facebook, competing social networks certainly do try to use). Of course, lack of access to a successful company’s resources is a form of barrier to entry in every case where a challenger wishes to enter a market where existing firms are long established. The same argument that the FCO makes with respect to Facebook and data could be applied to any firm that has a strong reputation, significant brand value, substantial customer loyalty, or even large real estate holdings or an established line of credit with a bank. For antitrust to require competitor access to these resources would be to undermine completely the competitive market forces that antitrust is supposed to support. And yet the FCO does not — and cannot — distinguish these valuable types of capital from that of access to a large pool of self-generated consumer data. The FCO also alleges that Facebook’s “exploitative business terms”33 constitute an antitrust violation because “[t]he damage for the users lies in a loss of control: they are no longer able to control how their personal data are used.” 34 But the allegedly exploitative nature of this loss of control is a function of European data protection laws, not antitrust law. The FCO appears to convert the alleged data protection law violation into an antitrust offence because, [a]ccording to the authority’s preliminary assessment, when operating this business model Facebook, as a dominant company, must consider that its users cannot switch to other social networks. Participation in Facebook’s network is conditional on registration and unrestricted approval of its terms of service. Users are given the choice of either accepting the “whole package” or doing without the service.35 But because of the essentiality of Facebook’s internal data, this choice is alleged to be a false one. And thus consumers “have no option to avoid the merging of their data” 36 — a violation, the FCO asserts, of data protection law. In this way the FCO uses data protection law as a foothold to build a convoluted antitrust case that really amounts to nothing more than the condemnation of Facebook’s size and success.

This is exactly the sort of uneasy merging of general social policy and the tools of competition policy that is so corrosive to the rule of law. Using the language of antitrust, the FCO is basically making a case that Facebook should be subject to competition law penalties for possessing more data than the FCO thinks is appropriate. Perhaps there are violations under other laws — data security or privacy laws, e.g. — but nothing in the FCO’s discussion of its preliminary assessment suggests anything recognizable in the economic literature as an abuse of dominance.

The FCO’s approach would dramatically expand the scope of German (and possibly European) competition law. As some commentators have observed, any dominant company that infringes any legal obligation aimed at protecting consumers — regardless of whether the violation actually results from the absence of competition, results in cognizable anticompetitive effects, or extends the company’s dominance — could be found to infringe competition law.37

Although particularly egregious here, the FCO’s efforts to reach beyond the limited constraints of competition law are not new. Starting in 2017, the FCO has been progressively urging for expansion of its powers into a broader consumer protection set of tools.38 Thus, even if it is unsuccessful in building its case under the current state of the law, the FCO is laying the foundations for convincing the German legislature why it needs vast new powers to combine consumer protection and competition into a single regulatory authority. Notably, even the US Federal Trade Commission (FTC) — which has both consumer protection and competition mandates — treats these missions separately, and regards competition cases to arise only under competition law, and not from the violation of specific consumer protection rules.

The implications of this approach are obvious. If competition law is unconstrained on its own terms — that is, it unmoored from a set of subject-specific constraints imposed by courts and legislatures — it threatens to become a large, sprawling, economy-wide set of regulations that resembles more closely a national industrial policy. The merits or demerits of actually having an economywide industrial policy aside, it is unquestionably a bastardization of antitrust law to facilitate the imposition of policies from law and regulation outside of competition policy, in ways that of necessity will promote other polices at the very expense of competition.

And, although this is a German case, its antecedents in the prevailing orthodoxy of EU law are not hard to recognize. Though the Commission frequently makes noises about conducting an economic analysis, as I discuss below, the EU’s competition process is, at root, a political one. As such, a tremendous amount of leeway is afforded to EU competition regulators. This makes sense, on its own terms: the Commission is, after all, a policy-making body directly responsive to the policy preferences of the President of the European Commission.39 While the Commission may sometimes cite to economics in its decisions, it fundamentally structures its activities in a way that affords it a large degree of policy-making discretion.

The Bundeskartellamt’s action, although specific to Germany, makes (unfortunate) sense against this backdrop. Where, unlike in the US, antitrust enforcement is viewed as a political function of the state, regulators administering competition policy can surely be relied upon to turn it into a general regulatory apparatus, as much as possible. While this is precisely what some advocates seem to want for US antitrust, doing so entails enormous risk and the potential agglomeration of massive political power outside of our democratically elected branch of government.

#### The plan is an abrupt interference in business confidence.

Alden F. Abbott 21. J.D. from Harvard Law School and M.A. in Economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

#### Risk of strategic litigation stifles business growth.

Patrick J. Medeo 18, Judicial Law Clerk at the New Jersey Superior Court, Appellate Division, JD from Rutgers Law School, BS in Business Administration and Legal Studies from Drexel University, “Potential Negative Impacts of Antitrust Litigation on Businesses”, Rutgers Law School Center for Corporate Law and Governance, 4/6/2018, https://cclg.rutgers.edu/blog/potential-negative-impacts-of-antitrust-litigation-on-businesses-by-patrick-j-medeo/

In the United States, antitrust litigation is not solely a matter of government concern. In fact, antitrust enforcement is a tool strategically used by private parties as part of business operations in the United States. By increasing litigation costs, potential damages, risk of suit, and regulatory oversight costs, antitrust litigation can be an impediment on businesses. Further, fear of litigation and associated costs stifles new product development and production in the United States by creating a high barrier to entry in the form of regulatory costs and significant risk of liability. With the number of antitrust cases rising annually, the negative impact on businesses should be of concern for enforcers especially as the number of private claims grows. Properly applied antitrust laws allow both government and private parties the ability to stop or hinder abuses of market power by participants seeking anticompetitive advantages.

A meritorious use of antitrust law by private parties may entail a situation where a cartel of competitors in an industry work together to fix prices, control supplies, and divide market share. In doing so the cartel blocks access to necessary resources for new entrants to the market; through strategic distribution, wholesale, and manufacturing contracts the cartel is able to raise barriers to entry so high that a new entrant would be unable to enter the market or would be unable to effectively compete upon entry. Proper application of antitrust laws by a private party would allow for recourse against the cartel participants and would promote competition in the industry by lowering barriers to entry for new market participants. However, due to the staggering effects that antitrust litigation can have, private parties may also abuse the laws in order to subvert competition.

According to an article published by the International Bar Association in 2009, it was noted how “broad procedural and substantive rules providing incentives to litigation produce economic harm” to companies and employees, specifically emphasizing the role played by antitrust cases. The liability is of such a drastic nature that liability policy premiums “increase (s) of 300 or more percent are not uncommon for [European] companies with a US [stock] listing.” In 2016 alone, there were 853 antitrust cases heard in federal courts, a majority of which were brought by private actors. This is an increase of 10.9 percent from 2015 and a 21 percent increase from 2012, where 702 antitrust cases were filed in federal court alone. [1] As of 2007, the average duration of an antitrust case, from filing to completion, was 24.6 months.[2] Such prolonged cases prove expensive for defendants and can create a disincentive to enter the United States Market as the frequency of them increases.

A poignant example of prolonged litigation is the LIBOR-Based Financial Instruments Antitrust Litigation. With lawsuits dating back to 2007, the private litigation against numerous banks is still in the process of closing, over a decade later. Collectively, the defendant organizations have paid hundreds of millions and potentially billions of dollars to end litigation, with firms like Citigroup paying individual settlements with private litigants upwards of $100 million.[3] The use of private antitrust litigation may be abused by private litigant as a strategic and anti-competitive tool.

Although Antitrust laws are meant to be used to uphold the competitive integrity of US Markets, the laws may also be used by private litigants for anti-competitive ends. This specifically comes into play where non-dominant firms in competitive markets utilize antitrust laws to sue dominant firms. According to a United State Department of Justice paper on the procompetitive and anticompetitive nature of private antitrust litigation, antitrust suits brought by non-dominant firms in competitive markets are more likely to constitute abuses of the law rather than true claims of anticompetitive activity.[4] Further, the use of private antitrust litigation can be highly profitable for nefarious plaintiffs; for instance, not only is the risk of long, complex, and the costly litigation a major deterrent for defendants but it may often lead to profitable settlements for the plaintiffs. In addition to profitable settlements, plaintiffs in private antitrust actions may also be rewarded with easier competition due to fear by defendants of copy-cat lawsuits, this is especially true after a successful government claims. Overall, even where claims may have merit private parties may be less likely to use antitrust laws to impede anticompetitive behavior than use it for their own profit.

Antitrust lawsuits are not only costly because of settlements, litigation costs, and other directly monetary outputs; instead, antitrust may also take a toll on opportunity and operational costs ultimately stifling innovation and go-to-market strategies. A prime example is the strategic use of antitrust laws by Digital Equipment Corp. against Intel in 1997. As illustrated in the Department of Justice’s article “The Strategic Abuse of the Antitrust Laws”, a well-timed antitrust allegation can be effective and profitable for the aggressing party. Although suit was never brought, the prospect of a large scale antitrust battle led to a $700 million settlement deal between Digital and Intel, ending months of patent litigation.[5] The settlement came just after a press release by Digital claiming that Intel was bolstering a monopoly in high power micro processing chips, at the same time the FTC began questioning Intel’s dominance in the chip and semi-conductor market.

In a highly competitive market Digital was able to nearly stop Intel in its tracks by threatening antitrust litigation and utilizing a Public Relations campaign to draw attention to the company’s market power, founded upon verifiable anticompetitive activity or not. The benefits of this strategy for Digital were not limited to a cash settlement, although the settlement was highly profitable more significant gains were made. In the settlement agreement it was stipulated that Digital would be guaranteed discounts on Intel Pentium chips (used in Digital’s computer products instead of its own competing chips), and continued access to the same Intel Pentium chips. Digital’s personal computers, which incorporated Intel chips, represented nearly 25% of its total revenues. By strategically threatening antitrust litigation Digital was able to slow Intel’s growing and usurping dominance in the high-power chip market, where both parties were competing. In doing so Digital added to its cash reserves while forcing Intel to acquire its chip technology. [6] Ultimately the FTC investigation lead to the finding that Intel had withheld information in the patent litigation process, but Digital’s threat antitrust suit forced a settlement exclusive to them and not benefitting other patent litigants against Intel.

Although private parties may, and often do, have a vested interest in utilizing antitrust law to stop anticompetitive behavior strategic uses such as Digital’s are viewed more as abuses. This is because they ultimately do not better competition in the market as a whole, and instead are highly profitable for only the aggressing party. Strategic uses of antitrust such as this appear problematic for businesses. Although they strong arm parties into dealing together, they also hinder development of new products and allow intelligent abusers to systematically restrain their competitors that may otherwise be outperforming other market participants. This may be done regardless of the veracity of their claim. Ultimately, it is the consumer that pays in the form of higher prices, slowed product development and potentially inferior products.

### Biz Con

#### Business confidence is relevant. Resilience is grounded in it.

Neil Irwin 21, senior economics correspondent for The New York Times, “17 Reasons to Let the Economic Optimism Begin,” NYT, 3/14/21, https://www.nytimes.com/2021/03/13/upshot/economy-optimism-boom.html

17. The post-pandemic era could start with a bang

The last year has been terrible on nearly every level. But it’s easy to see the potential for the economy to burst out of the starting gate like an Olympic sprinter.

That could have consequences beyond 2021. A rapid start to the post-pandemic economy could create a virtuous cycle in which consumers spend; companies hire and invest to fulfill that demand; and workers wind up having more money in their pockets to consume even more.

Americans have saved an extra $1.8 trillion during the pandemic, reflecting government help and lower spending. That is money that people can spend in the months ahead, or it could give them a comfort level that they have adequate savings and can spend more of their earnings.

Things are also primed for a boom time in the executive suite. C.E.O. confidence is at a 17-year high, and near-record stock market valuations imply that companies have access to very cheap capital. There is no reason corporate America can’t hire, invest and expand to take advantage of the post-pandemic surge in activity.

### AT: Biden Thumps

#### Biden doesn’t thump---Potential laws don’t change investment decisions.

Billy Duberstein 20, portfolio manager at Stone Oak Capital, “Should Tech Investors Worry About Antitrust?,” The Motley Fool, 10/9/20, https://www.fool.com/investing/2020/10/09/should-tech-investors-worry-about-antitrust/

Earlier this week, the House subcommittee on antitrust reform released a 450-page report after their 16-month investigation into the country's largest technology companies: Amazon (NASDAQ:AMZN), Alphabet (NASDAQ:GOOG) (NASDAQ:GOOGL), Apple (NASDAQ:AAPL), and Facebook (NASDAQ:FB).

The report's authors, including judiciary chairman Jerrold Nadler and antitrust subcommittee head David Cicilline, didn't paint a pretty picture, stating, "Our investigation leaves no doubt that there is a clear and compelling need for Congress and the antitrust enforcement agencies to take action that restores competition, improves innovation, and safeguards our democracy."

The report basically recommended throwing the gauntlet at big tech by breaking up their respective dominant market positions, preventing major acquisitions, and reforming outdated antitrust laws for the modern age.

If you're an investor in any of these big tech companies, as I am, is there a reason to fear the new report? Or should you stay the course?

What the report actually means

This report isn't a law. Written by the subcommittee on antitrust action, it's merely a recommendation to the House of Representatives, which may or may not attempt legislation next year.

Rep. Pramila Jayapal, who represents Amazon's district, said she believes a bipartisan bill would likely be taken up in the first six months of the next Congress. However, if lawmakers have to vote on a stimulus bill or other large priorities, it could get pushed further out. Remember, both houses of Congress would have to pass their bills and have them signed by the president. In addition, the House report was basically written only by the Democratic majority, with many Republican lawmakers declining to sign it.

A middle ground is outlined

There's some overlap between Democrats and Republicans on the matter of big tech, which means at least some sort of legislation could be forthcoming.

Notably, Rep. Ken Buck, a Republican of Colorado, and three other Republican lawmakers wrote a separate report called "The Third Way," which agreed with many of the problems cited by Democrats, but advocated for more restraint. Notably, Buck's report denounced Democratic calls for heavy-handed breakups or other approaches that would embolden lawsuits against these companies. Buck agreed with "about 330 pages of the majority's report," but recommended a more measured approach:

We will work with the Chairman in a bipartisan fashion to help enact the legislative solutions where we can agree ... However, we are concerned that sweeping changes could lead to overregulation and carry unintended consequences for the entire economy. We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.

More specifically, Buck's proposals stop short of breaking up big tech, but rather give antitrust agencies more clout, shift the burden of proof in merger cases to make it more difficult for big tech to acquire competitors, allow users to easily move data in between platforms, and incorporate more expert opinion on predatory pricing.

Buck also advocates for revitalizing the essential facilities doctrine, under which a company with monopoly power must allow competitors reasonable use of their facilities or platforms.

Potential consequences for each company

Most of the focus appears to be on Google's dominance of search and Amazon's dominance of e-commerce. Lawmakers seemed particularly interested in these platforms' ability to take data from their own customers to create their own competitive products.

In addition, lawmakers seem concerned that these companies have acquired competitors in order to dominate their respective fields. Facebook's 2012 acquisition of Instagram and Google's DoubleClick and YouTube acquisitions have drawn special scrutiny. Meanwhile, lawmakers are also concerned that Apple's App store, the sole gatekeeper for iPhone apps, may give it too much power over app developers.

It's hard to picture a scenario in which the government significantly disturbs these companies' current core business models, but legislation could hurt around the edges.

Amazon certainly makes products that sometimes compete with their third-party sellers, but so do most large retailers. Walmart has Sam's Choice and others, Kroger has Simple Truth and others, and Costco has the famous Kirkland private-label brand, to name a few. It's a bit unclear why Amazon is being singled out as the only offender.

Back when Facebook acquired Instagram in 2012 for $1 billion, Instagram was a relatively tiny company with 13 employees. It wasn't a forgone conclusion by any means that Instagram would go on to dominate social media the way it has, particularly without Facebook's internal investments over the years. Plus, if Facebook is so dominant in social media, how has TikTok become such a hit so quickly?

If Congress mandates that Apple separate its app store from its operating system, who's to say that the quality of apps and their integration with iOS wouldn't suffer? If the App store is allowed to remain, what is a fair commission?

Alphabet may face the most antitrust pressure of all because of its ability to take information from third parties and then give it away in its search engine or make its own products. For instance, online travel agencies have long complained that they advertised on Google, only for Google to use their data to develop its own competing travel booking service.

Congress might prevent Alphabet from paying to have its Google search engine as the preferred option on Apple iPhones. That could potentially create an opportunity for a competing search engine. Even so, I think most users would still prefer to search with Google -- there aren't many other search options besides Microsoft's Bing, which frankly isn't as good. Even if that happened, Google would save the billions it pays Apple every year for priority placement.

At worst, Amazon and Google might have to give up making some private-label or in-house products that compete with their third-party business customers, but again, this is still far from a foregone conclusion.

Empty heading

It might depend on the election

The course of the antitrust law will also likely be shaped by the upcoming election. However, even if Democrats win the Senate, it's unlikely that they'll have a filibuster-proof majority, so any laws will likely require bipartisan consensus. It would be difficult to one-sidedly implement the most heavy-handed measures. I think the ultimate outcome will most closely resemble Rep. Buck's middle ground.

What this means for shareholders

So, should you buy, sell, or hold these companies? It's difficult to make investment decisions based on potential regulations in which both the timing and content are subject to so much uncertainty.

However, as of the current moment, I don't think investors should fear Buck's middle-ground solutions. These types of common-sense reforms would likely curb unwanted behaviors without cutting at the heart of any of these companies' core revenues or profits. However, it could make future acquisitions more difficult.

Nevertheless, if a more severe law comes down and essentially mandates breakups or other stringent measures, that may be a different story. This still remains a remote possibility, and investors should monitor developments in this legislation if it moves to action next year.

In the news, in the price?

There's also a good case that at least some regulation is already factored into these companies' respective valuations. Alphabet is perhaps most in the crosshairs of antitrust regulation, with the Justice Department saying it will bring its own antitrust case against the search giant soon.

Meanwhile, Alphabet has lagged its FAANG stock peers for a significant period of time despite posting relatively good financial results. Facebook's stock also seems "cheap," at least compared with much of the high-flying tech sector.

In fact, the past year's relative performance for these four stocks seems correlated with how much antitrust threatens their model. Apple seems to have the least risk, and Google the most:

This seems to confirm that looming antitrust regulation is already factored into stock prices. A potential moderate resolution could thus actually benefit these stocks.

The most recent parallel to the current case was the 1998 antitrust action against Microsoft regarding the bundling of the Internet Explorer browser and Office suite with Windows. That case, which lasted three years, resulted only in fines, leaving the company's business model largely untouched.

What to do now

With so much uncertainty regarding the scope and timing of regulations, and with at least some of this unpredictability already factored into these stock prices, I think tech investors should stay the course. All of these companies well-managed, have good long-term prospects, and will likely remain largely intact no matter what regulation emerges.

However, investors should watch closely in case unlikely worst-case breakup scenarios become a reality.

### AT: Licensing Boards/Jobs

#### 1. Most workers aren’t affected.

Schubert et al. ‘21 [Gregor; 1/18/21; Ph.D. Candidate in Business Economics at the Harvard Economics Department and the Harvard Business School; et al.; "Employer Concentration and Outside Options," https://scholar.harvard.edu/files/stansbury/files/stansbury-jmp-jan18.pdf/]

On the other hand, our results do not support the idea that employer concentration is a major factor in wage suppression for the majority of U.S. workers. (This does not imply that other sources of monopsony power are not at play for workers in unconcentrated labor markets, notably arising from search frictions, switching costs, or differentiated jobs). While a very large share of occupation-city labor markets are highly concentrated according to typical thresholds, the majority of U.S. workers are not in labor markets with high degrees of employer concentration as measured by typical thresholds.58 This is because the most concentrated labor markets tend to be those with the fewest workers. So, while the effects of concentration on wages are non-trivial for the subset of workers in highly-affected labor markets, the aggregate effect of employer concentration on wages is unlikely to be very large, and employer concentration cannot explain more than a small share of aggregate income inequality.59

## Federalism

### Federalism Turn---2NC

#### Parker *draws the line* between state and federal power.

J. Thomas Rosch 12. Former Commissioner, Federal Trade Commission. Returning the State Action Doctrine to Its Moorings. Federal Trade Commission. 10-03-2012. https://www.ftc.gov/sites/default/files/documents/public\_statements/returning-state-action-doctrine-its-moorings/121003stateaction.pdf. Pg. 3-4

The State Action Doctrine Recognition of the limits of federal power over the states can also be seen in the Supreme Court’s interpretation of the federal antitrust laws. This line drawing between state and federal power is necessary in the area of antitrust enforcement because state and local governments often enact statutes that restrict competition and would violate the antitrust laws if done by a private entity. New York City’s cap on the number of taxi medallions it issues is one example; another example you should all be able to relate to are state bar associations, because these restrict the number of people that can practice law.

In its 1943 Parker v. Brown decision,9 the Supreme Court recognized the potential constitutional concerns raised by interpreting the federal antitrust laws to reach actions of states. The Parker case involved a challenge to a California regulatory system that restricted competition among growers of certain agricultural products for the express purpose of increasing prices and increasing the agricultural wealth of the state. Although such a program would undoubtedly violate the Sherman Act if done by private persons, the Court held that California’s program was not a conspiracy in restraint of trade because the antitrust laws did not “restrain state action or official action directed by a state.”10 As the Court explained, “[w]e find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature.”11 Thus, under Parker, anticompetitive regulation will survive antitrust challenge as long as a court is satisfied that the restraint at issue is truly state action.12 This has come to be known as the state action doctrine, or Parker immunity.13

### AT: Grid

#### Mineral cycles---that’s Allinson---copper, lithium, manganese hit bottlenecks.

Nafeez Ahmed 20 M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

# 1NR

## Court Politics

### Overview---1NR

#### Excess birth rate turns every impact and slowing population growth solves them.

Smail ’17 [Kenneth; Summer 2017; Professor of Anthropology Emeritus, Department of Anthropology, Kenyon College; The Social Contract, “The ‘Malthusian Dilemma’ Revisited: Excessive human numbers in a world of finite limits,” vol. 27]

Consider the following thought experiments. Examine any late twentieth/early twenty-first century problem, whether environmental, economic, political, social, or moral, and ask whether its solution would be made easier—or more difficult—by a steadily growing population. Or conversely, imagine trying to resolve, or at least accommodate, these same problems in a context where population size—whether global or local—has either stabilized or slowly begun to decline. Or consider the following challenge posed by Bartlett (1998): “Can you think of any problem, on any scale, from microscopic to global, whose long-term solution is in any demonstrable way aided, assisted, or advanced by having larger populations at the local level, the state level, the national level, or globally?” Or finally, might it be legitimate to ask whether the Earth suffers not so much from a “shortage” of resources as it does from a “longage” (or surfeit) of people (Hardin 1999)?

In what follows, I take the position that increasingly rapid population growth during the past century has played a central role in causing, or at least in further exacerbating, the numerous systemic problems— ecological, economic, political, social, and moral—that currently face our species. Although recognition of this fundamental fact has been slow in coming, there is now a growing realization that “demographic fatigue” can not only overwhelm the efforts of many less-developed nations, particularly those whose populations and corresponding infra-structural needs double (or more) every generation, but can also sap the strength of even the most robust and stable political and economic systems (Brown et al. 1999).

#### Overturning Roe would gut the principle of stare decisis---clearly contrary to precedent.

Litman 21 (Harry P. – former U.S. Attorney and Deputy Assistant Attorney General, “Will the principle of following precedent disappear with abortion rights?,” 7/30/21, https://www.theday.com/article/20210730/OP03/210739949)

The new Supreme Court conservative supermajority has already radically changed notions of law in some pockets of America. For proof, look no further than the brief that the state of Mississippi filed last week in the most closely watched abortion case in a generation, Dobbs v. Jackson Women’s Health Organization, which the Supreme Court will decide next term. The case concerns the constitutionality of a 2018 Mississippi law that generally prohibits abortion after 15 weeks of pregnancy. That Mississippi passed this law is itself breathtaking. The core holding of the Supreme Court’s abortion jurisprudence — reaffirmed as a “super duper precedent” by Chief Justice John G. Roberts Jr. at his confirmation hearing — is that the state is constitutionally forbidden from interfering with a woman’s decision to terminate a pregnancy before the fetus reaches viability, roughly at 24 to 28 weeks. The Mississippi law blatantly and expressly contradicts both the core holding and the principle of precedent, also known as stare decisis, meaning “standing by things decided,” which is elementary in constitutional law. It is as if a state were to pass a law saying criminal suspects could not be apprised of their right to remain silent, established by the 1966 Miranda decision, or that newspapers could be liable for defamation based on mere negligence rather than “actual malice,” in flat contravention of the 1964 ruling in New York Times v. Sullivan. Mississippi’s cheek in passing a law that is irreconcilable with governing precedent is an act of official irresponsibility of a piece with the South’s behavior during Reconstruction and the civil rights era. It’s no wonder the federal district court and court of appeals made quick work of striking down the 15-week abortion law. And yet the Supreme Court agreed to hear Mississippi’s appeal of those decisions, implicitly validating the state’s conduct as reasonable. Whatever the court’s conservatives think of the constitutionality of abortion rights, they should not be countenancing rank disavowal of its precedents. The brief Mississippi filed in Dobbs v. Jackson Women’s Health Organization takes the state’s brazen disrespect for current law a giant step further. “Nothing in constitutional text, structure, history or tradition,” it argues, “supports a right to abortion.” It offers no effective line of escape from the precedents set by Roe and its affirming progeny. It calls them “egregiously wrong” and repeats the claim that “the conclusion that abortion is a constitutional right has no basis in text, structure, history or tradition.” It’s hard to imagine a more extreme and sneering broadside against stare decisis. Even the successful battle in the last century to overturn the court’s infamous Plessy v. Ferguson “separate but equal” doctrine wasn’t a frontal assault that dynamited precedent. It was a years-long strategy that carefully dismantled racial segregation, theoretical brick by theoretical brick, to get to the court’s landmark decision in Brown v. Board of Education. Mississippi’s abortion strategy, besides being radical, is boneheaded. It is way too late in the day to argue “nothing in constitutional text, structure, history, or tradition supports a right to abortion.” Over time, it’s become clear that the right to choose to have an abortion is part of a constellation of unenumerated constitutional rights that the court has repeatedly recognized across a range of settings. (One notable example that bears on the result and reasoning in Roe is Griswold v. Connecticut’s recognition of a right of married people to use contraception.) Much of the coming fight over the Mississippi case — get ready for a donnybrook — will be about whether Roe alone can be overruled among those precedents. Although it’s plausible to argue that the court’s earlier abortion rulings have given women’s liberty too much relative weight, it’s much less plausible, even witless, to single out abortion rights — among other unenumerated rights — as alone being utterly unconstitutional. Not that such considerations matter to the string of anti-abortion rights states, emboldened by the court’s new makeup, that have followed Mississippi’s lead and passed their own legislation pushing beyond the limits of existing law. Texas recently banned abortions once a fetal heartbeat can be detected, which happens at around six weeks. Nineteen states have enacted nearly 100 new restrictions on abortion, including 12 bans, in 2021. These states may all be living in a constitutional fairy tale. But they are acting on the hope that the court’s conservative supermajority will make it all come true. And it might.

#### Stare decisis is key to functioning democratic governance—sustainable judicial legitimacy

Gentithes 9 (Michael – Research Attorney for the Illinois Appellate Court, “In Defense of Stare Decisis,” p. 799, https://willamette.edu/law/resources/journals/review/pdf/volume-45/wlr45-4-gentithes-final.pdf)

The argument for a rule of stare decisis that frequently controls Supreme Court jurisprudence is often entangled with the controversial issues the Court faces when it must choose to either invoke or ignore the doctrine. But those issues distract attention from the centrality of stare decisis to democratic governments’ vitality. By taking a unique, systemic perspective this article demonstrates that stare decisis, though not a strict rule of constitutional construction, plays a vital role in the preservation of democracy. Respect for the Supreme Court’s prior decisions lends legitimacy to a body with a transitory membership. It assures citizens that the Court’s decisions are not merely the whims of Justices’ personalities, and renders the Court “strong” in the sense that it can issue decisions in the country’s most pressing controversies that both the parties and society at large consider final. I will apply this new perspective to the Court’s current stare decisis doctrine and analyze its effectiveness. Finally, I will suggest original factors that the Court should consider when applying stare decisis by looking not just backward to the decision potentially being overruled, but also forward to the decision which may replace it.

#### Solves extinction.

Kasparov 17 (Garry, Chairman of the Human Rights Foundation, Russian political activist + 13th World Chess Champion, 2/16, “Democracy and Human Rights: The Case for U.S. Leadership” http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf)

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

### Link---1NR

#### 1. Antitrust rulings cost Robert’s capital—create massive decision and error costs

Lambert 15 (Thom – Professor at the University of Missouri Law School & Alden F. Abbott, “Recognizing the Limits of Antitrust: The Roberts Court Versus the Enforcement Agencies,” p. 796-97, https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1754&context=facpubs)

The first thing to note is that antitrust adjudication poses hard questions. Challenges to concerted conduct-potential collusion-are often perplexing because many output-enhancing business arrangements (for example, joint ventures) involve cooperation among independent economic actors, often competitors. Adjudicators must determine whether the coordinated arrangement at issue is likely to increase market output, in which case the trade-restraining agreement is reasonable, or reduce it, in which case the requisite unreasonableness exists. In monopolization and attempted monopolization cases, adjudicators must determine if conduct that won business for the defendant vis-A-vis its rivals was just vigorous competition or crossed into unreasonable exclusion territory. To draw the necessary distinctions, judges and juries generally must assess conflicting testimony from economic experts and reach conclusions on such complicated subsidiary issues as the contours of the relevant market, the existence and size of entry barriers, and the elasticities of demand and supply for the product at issue. There are thus significant costs in simply reaching a decision as to whether a particular conduct violates the antitrust laws. If the conduct is challenged in court, the parties themselves, with the aid of lawyers and economic experts, must gather, process, and present a large amount of complex data. The jury or judge must then deliberate over the information presented and decide both subsidiary issues (for example, what exactly is the relevant market?) and the outcome-determinative question (for example, is the conduct "unreasonably" exclusionary?). Even before any court challenge, business planners must assess the likelihood that their contemplated conduct may be deemed to violate the antitrust laws. Taken together, the costs that business planners, litigating parties, and adjudicators face in assessing and establishing the legality or illegality of a practice constitute antitrust's "decision costs." Those are not the only costs associated with antitrust adjudication. Given the difficulty of distinguishing collusion from output-enhancing cooperation and unreasonably exclusionary conduct from vigorous competition, adjudicators will certainly make mistakes in deciding antitrust cases. Those mistakes, then, will themselves impose social costs. A mistaken acquittal of an anticompetitive practice-a false negative or "Type II error"-will tend to permit market power that causes resources to be allocated away from their highest and best uses.lS A mistaken conviction of a procompetitive practice-a false positive or "Type I error"-will squander social welfare by denying market participants the benefit of the efficient, wrongly condemned business practice. The latter sort of error is likely to be more damaging in the long run.19 Whereas market power, the result of a Type II error, tends to self-correct as firms enter the market and expand output in response to higher prices, judicial condemnation of an efficient practice will have economy-wide, not just market-wide, effects and may be corrected only by a subsequent judicial decision or a legislative fix. 20 Nevertheless, both false convictions and false acquittals tend to reduce social welfare, imposing "error costs."

#### 2. The plan bucks the trend of the Roberts Court ruling exclusively for corporate defendants.

Rosen 8 (Jeffrey – Professor of Law at George Washington University, “Supreme Court Inc.,” 3/16/8, https://www.nytimes.com/2008/03/16/magazine/16supreme-t.html?ex=1363492800&en=d190df9f4b5bdc61&ei=5124&partner=permalink&exprod=permalink)

Today, however, there are no economic populists on the court, even on the liberal wing. And ever since John Roberts was appointed chief justice in 2005, the court has seemed only more receptive to business concerns. Forty percent of the cases the court heard last term involved business interests, up from around 30 percent in recent years. While the Rehnquist Court heard less than one antitrust decision a year, on average, between 1988 and 2003, the Roberts Court has heard seven in its first two terms  and all of them were decided in favor of the corporate defendants.

#### 4. Abrupt nature of the plan guarantees the link.

Marshall 2 (William Marshall, prof of law @ UNC, Fall 2002, 73 U. Colo. L. Rev. 1217)

It might also be argued that the judicial activism question is misguided because judicial activism is not inherently wrong. Rather, the proper inquiry should simply be whether a case was correctly decided - not whether it was activist. Although I agree that a determination of activism is not the same as a determination of merit (an activist decision is not necessarily wrong, a non-activist decision is not necessarily correct), the activism inquiry can shed light on the merits issue. A decision that overturns a federal law while ignoring precedent, text, history, and jurisdictional limitations would appropriately be subject to an activist critique regardless of result. In addition, one need not be completely in the camps of Alexander Bickel, Robert Nagel, Mark Tushnet, and others to recognize that there is value in judicial restraint. Court overreaching may negatively affect the political capital of the judiciary. Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (1962). Abrupt judicial action invalidating politically achieved results may undermine long-term support for the principles the decision was designed to achieve. Robert F. Nagel, Constitutional Cultures: The Mentality and Consequences of Judicial Review (1989). Courts may well be less receptive to progressive social and economic action than are the political branches. Mark Tushnet, Taking the Constitution Away from the Courts (1999). Finally, the activism critique is important in that it sets rhetorical constraints on actions that might otherwise appear unbounded. The legitimacy of a particular decision cannot be completely appraised without evaluating the deciding court's methodology. Activism is a part of that inquiry.

#### 5. Conservative’s love federalism.

David Super 19. Opinion contributer. “Conservatives should note the Trump administration's flippant federalism” The Hill. 12-04-19. https://thehill.com/opinion/white-house/472936-conservatives-should-note-the-trump-administrations-flippant-federalism

**Federalism**, defined as respect for state and local governments, **has long been a cornerstone of the conservative movement in this country.** Conservatives have **criticized liberal initiatives to expand the federal government’s role** — from the New Deal to civil rights to Medicare, Medicaid and environmental regulation to the Affordable Care Act — as **usurping the responsibilities of state and local governments**. President Ronald Reagan explained his federal budget cuts as “returning power to the states and communities.”

#### 6. Antitrust rulings are politically toxic for Roberts—pulled into partisan debate

Khan 20 (Lina M. – Academic Fellow at Columbia Law School, “The End of Antitrust History Revisited,” 3/10/20, https://harvardlawreview.org/2020/03/the-end-of-antitrust-history-revisited/)

Today, however, it is clear that what may have appeared as the end of antitrust history proved instead to be a prolonged pause in an enduring clash over the purpose and values of the U.S. antitrust laws.6 Over the last few years, the relative stability of the antitrust consensus has yielded to a sharp rupture.7 Two aspects of this break are most notable: first, the fact that the debate cuts to foundational questions about the goals of antitrust, and second, its highly public-facing nature. No longer relegated to law journals and practitioner conferences, antitrust has once again been thrust to the forefront of public conversation, prompting front-page headlines,8 congressional hearings and investigations,9 magazine covers,10 and discussion at a presidential debate.11 Antitrust law has been transformed quickly from a relatively settled and sequestered domain of expertise to an area of active debate, with its future now something to be constructed rather than inherited. Professor Tim Wu’s The Curse of Bigness is a book for this moment. In just under 150 pages, Wu offers a sweeping history of antitrust law and traces how it is that, in his view, antitrust became unmoored from its central tenets and animating principles. The book presents a diagnosis and a bold call to arms, seeking to recover a republican theory of antimonopoly and to rehabilitate robust antitrust enforcement. Writing about a specialized area of law for a generalist audience inevitably exposes an author to criticism, which Wu has drawn.12 But assessing the book solely as an academic contribution misunderstands the theory of change reflected in Wu’s choice of format. The Curse of Bigness is written for a mainstream audience because Wu believes that reinvigorating antitrust will require more than winning over academics or practitioners. Instead, informing and engaging the public — including advocates, organizers, policymakers, journalists, and other general readers — is a prerequisite for creating the political pressure needed to reorient antitrust around the antimonopoly values it has abandoned in recent decades.13 This Review builds on Wu’s book to explain the significance of the current rupture in antitrust and to situate it within a broader intellectual trajectory. Debates over the foundational purpose of antitrust are not new, and examining how this latest clash fits alongside previous contestations is essential for understanding what has yielded the current contestability and assessing the competing visions. Part I of this Review summarizes Wu’s chief contributions in The Curse of Bigness, focusing on three tenets that form the basis of the book. Part II offers an analytic breakdown of the overhaul in antitrust doctrine that is the subject of Wu’s critique, tracing the transformation of antitrust to changes in descriptive claims and normative assumptions that the Chicago School introduced. I argue that framing Chicago’s interventions this way lets us map the current antitrust debate with greater coherence. Doing so, moreover, reveals the limits of proffered correctives to the Chicago School and underscores the need for what has been called a “Neo-Brandeisian” program in law and political economy. Part III argues that a central component of the Neo-Brandeisian project should include reforming the institutional structure of antitrust law and policy. Although most critiques of present-day antitrust focus on doctrinal rules and the substantive legal framework that governs antitrust analysis, the exclusive reliance on a common law approach to antitrust is a key source and enabler of current dysfunctions. Complementing (or even largely supplanting) this common law structure with an administrative approach would both equip antitrust to keep pace with evolving business practices and new market realities and help democratize antitrust in the ways that Wu and other reformers champion.

#### 7. Their evidence concedes the FTC wouldn’t pursue cases---zeros the case.

Daniel A. Crane & Adam Hester, Frederick Paul Furth Sr. Professor of Law, University of Michigan Law School. \*\* J.D., May 2016, University of Michigan Law School.State-Action Immunity and Section 5 of the FTC Act, 115 MICH. L. REV. 365 (2016). Available at: <https://repository.law.umich.edu/mlr/vol115/iss3/2>, accessed 7/30/21, +=,

As to the second understanding of Lochner—that it entrenches antiredistributionist and laissez faire baselines—the question of FTC super-preemption is also mixed. On the one hand, a heightened preemptive power for the FTC in competition matters would have a decidedly deregulatory effect. Unlike its general antitrust enforcement authority—with which the commission can intervene to block competitive distortions created by private actors—the commission’s preemptive power over state law could lead to dismantling state regulatory controls on business behavior. It should be no surprise that some of the strongest critics of the Parker immunity doctrine have been aligned with the anti-regulatory Chicago School,248 nor that the recent resurgence in FTC enforcement against anticompetitive state regulations occurred during a generally pro-business Republican administration.249 On the other hand, the FTC’s preemptive agenda would be unlikely to focus on entrenching established economic interests and, hence, preserving the status quo in the distribution of property and income. To the contrary, most anticompetitive state regulations have the effect of entrenching economic incumbents and denying entry to new firms and technologies. Although deregulatory, a superior-preemptive FTC enforcement agenda would hardly reflect the sort of legal and economic stultification concerns that Sunstein expresses about Lochner. 250

### AT: June Solves---1NR

#### A. “Resolved”---means certain.

Webster’s Revised Dictionary 1996 ((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### B. Should is mandatory.

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

### AT: NU---1NR

#### Roberts in the majority would produce a narrow decision preserving Roe.

Gerstmann 21 (Evan - Professor of Political Science and International Relations at Loyola Marymount University, J.D. from the University of Michigan, Ph.D. in Political Science from the University of Wisconsin; "No, The Supreme Court Is Not About To Overrule Roe v. Wade," 5/18/21 <https://www.forbes.com/sites/evangerstmann/2021/05/18/no-the-supreme-court-is-not-about-to-overrule-roe-v-wade/>)

The Supreme Court has agreed to hear a case about Mississippi’s nearly total ban on abortions after 15 weeks into a woman’s pregnancy. The press is filled with dire warnings that the Court’s new six-Justice conservative majority will use this case to overturn or sharply scale back Roe v. Wade. That is the 1973 case that established a constitutional right to an abortion. Such a result is very unlikely. The much more likely result is a narrow decision holding that states are allowed to present evidence in courts that abortions cause pain to fetuses after a certain point in a pregnancy. Even if the Justices allow this evidence, that doesn’t mean that they will allow major new restrictions on abortion. And if the Court eventually upholds the Mississippi law, that would be because the state proved two things in court: 1) abortions after 15 weeks cause severe pain to the fetus; and 2) women have ample opportunity to get an abortion prior to 15 weeks into their pregnancy. These are both very hard claims to prove. Mississippi tried to present evidence in court that fetuses develop the capacity to feel pain somewhere between 14 and 20 weeks into a pregnancy. The judge hearing the case refused to hear the evidence reasoning that the Supreme Court has held that the only constitutional standard that matters in abortion cases is “viability”—can the fetus survive outside of the womb? There is a good chance that the Supreme Court will hold that the judge erred in excluding that evidence. The Court has repeatedly held, in the context of cases about cruel and unusual punishment, that the state has an obligation to avoid the infliction of unnecessary pain. Also, as the federal appellate court pointed out, at least two quite pro-life Justices wrote that avoiding fetal pain was a strong government interest. Justice Harry Blackmun (the author of Roe v. Wade) and Justice John Paul Stevens (the Court’s most liberal Justice for many years) wrote that they considered "it obvious that the State's interest in the protection of an embryo ... increases progressively and dramatically as the organism's capacity to feel pain, to experience pleasure, to survive, and to react to its surroundings increases day by day." So the most likely outcome of this case is a narrow ruling that states can present evidence in court about when a fetus begins to feel pain. Many will likely see this as a Trojan horse to eliminate the right to an abortion. But courts will only allow laws like Mississippi’s to stand if the state can make a convincing showing that fetuses feel pain after 15 weeks. The evidence that fetuses are capable of feeling pain at 20 weeks, much less 15 weeks, isn’t very strong, so the states will have a lot of trouble with that. Also, even if the Supreme Court does allow states to submit evidence of fetal pain, and even if the states can make a strong showing that fetuses feel pain 15 weeks into a pregnancy, any pain-based restrictions on abortion would still be unconstitutional if they impose an “undue burden” on a woman’s access to abortion. Any law that has the purpose or effect of creating a substantial obstacle to a woman getting an abortion is unconstitutional under this standard. This means that states would not only have to demonstrate that 15 week-old fetuses can feel pain, but also that women can consistently tell when they are pregnant early enough that the 15-week limit would leave them sufficient time to procure an abortion if they wish to. Because women can have what appear to be periods even when they are pregnant, the states will have a difficult time on this issue as well. Nonetheless, there is a good chance the Supreme Court will give them the opportunity to make their case. With the current state of medical knowledge they will probably fail, but medical knowledge changes with time and the Court is likely to keep the door open for new evidence. What about the fears that the Court isn’t really in good faith here and is just looking for a back door way to limit abortion? That doesn’t seem to be the case. As noted, even the Court’s most liberal Justices have expressed genuine concern over the fetal pain issue. And if the Court were really trying to find an indirect way to allow more abortion restrictions, it passed up a golden opportunity when it took this case. The lawyers for Mississippi asked the Court to rule that abortion providers can’t go to court to challenge abortion restrictions. They wanted a ruling that only the pregnant women themselves can challenge these limits. Because individual women usually have fewer resources and a short window to challenge restrictions before they give birth, they would be much less effective at bringing these cases. When the Supreme Court agreed to hear this case, it refused to consider the question of whether abortion providers can be kept out of court. So it doesn’t look like their secret motive is to limit abortions as much as possible without explicitly saying so. Of course, the Supreme Court is not always predictable. None of the three Trump appointees have long records of deciding abortion cases. And Chief Justice John Roberts will have control over who writes the Court’s opinion if he is in the majority. But if he isn’t in the majority, that decision will be made by the Court’s most conservative (and strongly pro-life) Justice, Clarence Thomas. So nothing is certain. But given the current political climate (including Senate Majority Leader Chuck Schumer’s warning that the Justices “will pay the price” if they vote against abortion rights) Roberts will probably keep this decision for himself and produce a narrow opinion.

#### Roe will survive – Roberts is still able to move the court – either Kavanaugh or Barret could side with him.

John Fritze, 7-19-2021, [John Fritze has covered politics for nearly two decades and is now the Supreme Court correspondent for USA TODAY. Stops along the way in Albany, Indianapolis, Baltimore and the occasional trout stream. "Overturn Roe v. Wade? Conservative divisions could signal narrower outcome in abortion case", USA TODAY <https://www.usatoday.com/story/news/politics/2021/07/19/division-among-supreme-court-conservatives-complicates-overturning-roe/7492770002/> //]

When the Supreme Court agreed in May to hear a challenge to Mississippi’s ban on most abortions after 15 weeks of pregnancy, many saw it as a decisive move in the decades-long effort to overturn Roe v. Wade. Though that remains one possible outcome, many of the high court's most significant decisions in recent months underscore that its six-justice conservative majority does not always operate in lockstep. A look at some of their past opinions and statements on abortion offers a more nuanced view that complicates pat predictions. The Mississippi case, which the court could hear as early as November, will probably be the most closely watched on its docket in the next year – generating frenzied debate on one of the nation's most polarizing social issues before the 2022 midterm election. Unlike other disputes, the suit raises fundamental questions about the right to abortion. "I don't know if there's a path to uphold the Mississippi law without reconfiguring abortion rights at least a little bit," said Neal Devins, a law professor at William & Mary Law School. But "I see no prospect for Roe being overturned." Mississippi approved its prohibition on most abortions after 15 weeks in 2018 and is one of 16 states with pre-viability bans that have been blocked by federal courts, according to the Guttmacher Institute, a research group that supports abortion rights. The law has no exception for rape or incest but allows abortions in cases where there is a medical emergency or "severe fetal abnormality." Roe concluded that women have a right to an abortion during the first and second trimesters but that states could impose restrictions in the second trimester. Two decades later, the court upheld that right but overturned the trimester framework and allowed states to ban most abortions at the point of viability, when a fetus can survive outside the womb – roughly 24 weeks. Pre-viability bans in conservative states are intended to challenge the court's precedent in those two cases. The question for the nation's highest court in the Mississippi case, Dobbs v. Jackson Women’s Health Organization, is where states may draw the line on prohibiting abortions. The answer, expected next year, will turn on how the conservative majority balances precedent against a generations-old struggle to weaken Roe. Here’s a look at what the justices have said or written on abortion: Roberts' minimalism Chief Justice John Roberts brings an especially interesting history to the Mississippi case. In the court’s most recent major abortion decision, a plurality led by Associate Justice Stephen Breyer struck down a Louisiana law last year requiring abortion providers to have admitting privileges at nearby hospitals. Roberts gave Breyer and the court's other liberals the fifth vote needed to reach that outcome. Instead of signing onto Breyer's opinion in June Medical Services v. Russo with the three other liberal justices, Roberts wrote a concurrence in which he concluded that a 2016 precedent forced his hand. The court, Roberts wrote, must "treat like cases alike” and the Louisiana law was nearly identical to one from Texas the court invalidated years before. The move squelched an outcry from liberals, who probably would have framed a different outcome as a political flip-flop after two conservatives joined the court in the four years after the Texas case. But by declining to sign the plurality opinion, Roberts gave conservatives a chance to pursue other anti-abortion laws, even though he had sided with Breyer and the liberals. Though no longer a swing vote, Roberts built similar coalitions this year between conservatives and liberals with narrow opinions that moved the court in a conservative direction more slowly than some had predicted. Assuming Roberts lands in the majority in Dobbs, experts said, he could attempt to repeat that high-wire act by crafting an opinion that undercuts Roe without directly overturning it. That could kick legal fights about the constitutionality of abortion down the road. "I think what he would like to see from the court on an abortion case ahead of the midterm elections is something more narrow, something that does not explicitly overrule Roe, but something that perhaps eliminates viability as a salient concept in the court’s abortion jurisprudence," said Melissa Murray, a law professor at New York University. That "would send the lower federal courts into a bit of disarray trying to determine whether a 12-week ban or six-week ban was permissible under the new standards," she said. "And that would set up a spate of litigation for the next two years." Kavanaugh in the middle When Associate Justice Brett Kavanaugh made the short list in 2018 to replace retiring Associate Justice Anthony Kennedy, some conservatives questioned his commitment to the anti-abortion cause. They pointed to one of his only opinions on the U.S. Court of Appeals for the District of Columbia Circuit that dealt with the issue: the case of a 17-year-old immigrant in federal custody who sought the procedure. Kavanaugh appeared eager to avoid sweeping constitutional questions about abortion and immigration. When the appeals court in 2017 permitted the teen to end her pregnancy, Kavanaugh did not join a stemwinder of a dissent raising those issues. Instead, he wrote a more limited dissent defending the idea of having the teen first meet with an American adult sponsor, similar to a foster parent. During his confirmation hearing, Kavanaugh called the court’s decision in Roe "precedent on precedent" and described the notion that women have a constitutional right to abortion as something that has been "reaffirmed many times over 45 years." Since then, Kavanaugh has emerged as the median justice, landing in the high court's majority in 97% of all cases during the 2020-2021 term, according to statistics compiled by SCOTUSblog. Kavanaugh dissented in June Medical, breaking with Roberts and asserting "additional factfinding is necessary" to evaluate whether Louisiana’s law would have closed the state’s abortion clinics. Mary Ziegler, a Florida State University law professor, said abortion rights advocates will try to appeal to Kavanaugh's fealty to precedent. Abortion opponents, she predicted, will try to convince him to do what "you sort of assume he wants to do" while not pushing him too far. "A lot of the same kinds of arguments about precedent and backlash that progressives have aimed toward Roberts will also be aimed at Kavanaugh," said Ziegler, author of "Abortion and the Law in America" and other books on the issue. "He shares Roberts’ concerns but also seems to think he can write more conservative opinions and finesse those concerns." Barrett's first full term Associate Justice Amy Coney Barrett has made her personal views on abortion clear. Years before she was confirmed to the Chicago-based U.S. Court of Appeals for the 7th Circuit, while still a Notre Dame law professor, Barrett signed a two-page advertisement in the South Bend Tribune describing Roe's legacy as "barbaric." During her Supreme Court confirmation hearing last year, Barrett said she didn't "have any agenda" to overturn Roe and said she would follow the "rules of stare decisis," the Latin term for the notion of precedent. Pressed about the ad during her hearing, Barrett said she hadn't remembered it until it surfaced in a newspaper story. "Thirty years worth of material is a lot to try to find and remember," she said. None of that means Barrett would vote to overturn Roe. Some court observers have questioned whether she would make that decision so early. Barrett, who was confirmed in late October, will embark on her first full term on the court this fall. "I would be stunned if she would want to go all the way to overrule Roe so early in her tenure on the court and let it define her,” said Devins at William & Mary. Barrett's best-known abortion case on the 7th Circuit came in 2018 in the form of a challenge to an Indiana law requiring fetal remains to be buried or cremated. After a three-judge panel invalidated the law, the full appeals court rejected the state’s request for reconsideration. Barrett dissented from that decision. When Indiana appealed to the Supreme Court, a 7-2 majority upheld the state's law. Gorsuch's textualism Though he spent more than a decade as an appeals court judge in Colorado, Associate Justice Neil Gorsuch didn't directly confront constitutional questions about abortion. He did rule in cases touching on the issue, including over "Choose Life" license plates. Gorsuch sided with abortion rights advocates in 2007 on a threshold question: whether a lower federal court had jurisdiction to decide if Oklahoma could deny funding collected from the specialty plates to an organization involved in "abortion related" activities, such as counseling. Gorsuch ruled the lower court could hear the case on the merits. Months later, the district court did just that – and ruled against the group. Gorsuch was more on point in a bristling dissent in June Medical, asserting that the court's usual process had been "brushed aside" to strike down the Louisiana law and that the decision was "a sign we have lost our way." Part of Gorsuch's argument was that the court ignored the state's ostensible reason for requiring abortion providers to have admitting privileges: to ensure the procedures were conducted safely. Steven Aden, chief legal officer at Americans United for Life, declined to predict how Gorsuch might approach Dobbs. Aden, whose group has fought for abortion restrictions for nearly five decades, noted Gorsuch has embraced his reputation as a textualist, the notion that jurists decide cases based primarily on the text of the law. That, Aden argued, ought to augur well for the anti-abortion cause. "Any judge who is a fan of an original, textual reading of the constitutional text – who's loyal to the intention of those who wrote it – is a friend of the right to life," Aden said. "He's also been one of the strongest federal judges on religious liberty, going back to the 10th Circuit." Conservative stalwarts Associate Justices Clarence Thomas and Samuel Alito, the court’s most reliable conservative votes, are the most likely to take on Roe directly. Thomas, the most senior associate justice, wrote last year of the court’s "ill-founded abortion jurisprudence" in his dissent in June Medical. He described those decisions as "grievously wrong" and said they "should be overruled." Before Alito's confirmation in 2006, a memo he wrote for the Justice Department in the 1980s surfaced in which he called for overturning Roe. Though Alito has been a consistent vote to support abortion restrictions, he has been more circumspect in discussing his broader views on the court’s precedents. Alito dissented in October when the Supreme Court said women seeking to end their pregnancies with medication didn't need to visit a doctor because of COVID-19 in the short term, a move he said used the "pandemic as a ground for expanding the abortion right recognized in Roe v. Wade." When the case made it back to the court in January, it ruled women were required to visit a doctor's office after all. Alito dissented in June Medical, asserting the dispute should have been returned to the trial court for additional fact-finding. Middle ground for liberals? Based strictly on the size of their group, the court’s three liberals – Associate Justices Breyer, Sonia Sotomayor and Elena Kagan – are likely to be in damage control mode when the Mississippi case is decided, experts said. But as the term that wrapped up this month demonstrated, that doesn’t mean they are without influence. The court’s liberals joined with Roberts in one of the most closely watched cases this year involving a conflict between LGBTQ rights and religious freedom. A unanimous court concluded a Catholic foster care agency could decline on religious grounds to screen same-sex couples as prospective parents. The opinion stopped short of what some conservatives wanted: The overturning of a decision in 1990 that makes it more difficult for religious entities to challenge generally applicable laws. A similar lineup is possible in Dobbs: Liberals could join at least two conservatives in an opinion that does something less than overturn the court’s precedents. On the other hand, such compromise may be harder to reach on the divisive issue of abortion. "What would a compromise look like in this case?" asked Ziegler, the Florida State University law professor. "If the court upholds this law and gets rid of viability or does something else that’s a pretty huge deal but stops short of overturning Roe, I don’t know how happy about that you’re really going to be if you’re Justice Breyer or Justice Kagan."

### AT: Thumpers---1NR

#### The Texas decision tells us nothing about how the Court will rule in Dobbs—the Texas law did not present the same precedent issues the Mississippi law does

Ziegler 9/1/21 (Mary - law professor at Florida State University, “Supreme indifference: What the Texas case signals about the court’s treatment of abortion,” https://www.scotusblog.com/2021/09/supreme-indifference-what-the-texas-case-signals-about-the-courts-treatment-of-abortion/)

In some ways, the court’s inaction can tell us only so much about the fate of Roe v. Wade and Casey, which the justices are slated to consider this coming term in Dobbs v. Jackson Women’s Health Organization, a case about a Mississippi law that bans most abortions after 15 weeks. While Texas has tried to avoid a confrontation with Roe and Casey through its private-enforcement scheme, the Mississippi case will all but force the justices to reverse or transform the court’s most important abortion precedents. Mississippi outlaws many abortions before viability — the point at which survival is possible outside the womb — notwithstanding the fact that Roe and Casey disallow undue burdens on the right to choose abortion before viability. To uphold Mississippi’s law, the court will have to reverse Roe outright or declare an end to viability as a limit on abortion bans. The Texas case does not require the same kind of sea change, especially given the emergency posture in which it came up to the court. Lower courts have upheld narrower laws allowing for lawsuits against abortion providers while purporting to enforce Roe and Casey (the U.S. Court of Appeals for the 5th Circuit, in Okpalobi v. Foster, is the most prominent example). The justices might yet respond to the Texas providers’ emergency application — or may simply think that providers cannot sue the state judges they have hauled into court. Besides, the best chance for supporters of abortion rights is to lean on precedent. Chief Justice John Roberts wrote at length about the importance of stare decisis in voting to strike down a Louisiana abortion restriction last year in June Medical Services v. Russo. Justices Brett Kavanaugh and Amy Coney Barrett spoke at length about respect for precedent during their confirmation hearings. Reversing Roe and Casey would upend nearly a half century of jurisprudence. Allowing S.B. 8 to go into effect does not as obviously contradict precedent — or expose the court to backlash. Siding with Mississippi in Dobbs in what is sure to be a closely watched opinion next June seems risky. Allowing Texas’ law to go into effect through inaction in the middle of a night when the court is not even in session, not so much. But the court’s willingness to allow Texas to functionally outlaw abortions sends a powerful message. The justices have shown that they can respond quickly to emergency applications when the spirit moves them. It is possible that one or more of the justices is writing a lengthy dissent that explains the wait here. Just the same, the court’s silence seems to mark a fundamental break with the respect the justices have long shown those on either side of the abortion issue. Saying nothing suggests that there was no emergency — and that a massive shift in abortion law in one of the nation’s largest states is a matter of no particular import. Americans opposed to abortion will celebrate Texas’ law as a crucial step toward the protection of the nation’s most vulnerable. Supporters of abortion rights mourn that the court has effectively reversed Roe without saying a word. Only the justices themselves seem to think that the matter is not worthy of comment. The court’s silence cannot tell us whether the court will reverse Roe openly this June or in a subsequent decision. Inaction on the emergency application does not reveal much about how the court’s new 6-3 conservative majority views precedent; nor does it establish whether Roberts’ commitment in June Medical will persist (or whether Barrett, who replaced the late Justice Ruth Bader Ginsburg after June Medical was handed down, will share that commitment). But the events of the past 24 hours do raise questions about whether the court will approach Dobbs as the legacy-defining case that it is. The Supreme Court’s membership has changed, but the gravity of the abortion issue has not. Dobbs gives the justices a second chance to show that they have not forgotten.

### AT: No Impact---1NR

#### Abortion ban collapses reproductive rights---extinction

Paul Ehrlich 18, President, Center for Conservation Biology, Bing Professor of Population Studies, Stanford University, 3/24/18, quoted by Sputnik News, “Overconsumption, Inequity 'Lower Chances of Avoiding Global Collapse' – Scholar,” https://sputniknews.com/analysis/201803241062865525-overconsumption-inequity-global-collapse/

The collapse of civilization in the next few decades is imminent, and it could be triggered by a variety of factors, Paul Ehrlich told Sputnik. "It could be caused by a nuclear war, droughts and floods leading to mass starvation, a bursting of the debt bubble, political unrest from refugee flows or increasing economic inequity, trade wars, terrorism or synergizing combinations of these and other factors," the researcher said. The main reasons behind all these negative predictions are, according to the scientist, overpopulation and overconsumption. He is confident that these two factors will drive our civilization over the edge. "The basic problem is the wrecking of human life-support systems by growth in aggregate consumption — and that is a product of growth in population size and growth in per capita consumption. Various forms of inequity — gender, racial, religious could contribute by making it less likely that people will provide the cooperation required to give the chance of avoiding a collapse," the analyst argued. In Ehrlich's view, the situation has significantly worsened since he released a corresponding warning in his book "The Population Bomb" 50 years ago. "The population has doubled in size, climate disruption is now much more thoroughly understood and is already causing problems, there soon will be more weight of plastics in the oceans than fish; hormone-mimicking synthetic chemicals are now toxifying earth from pole to pole and are the likely cause of plunging sperm counts around the world; almost half of wildlife has been exterminated in the greatest mass extinction episode in the last 66 million years," the analyst said. According to him, the chances of a global nuclear war wiping out civilization are now also "higher than at any time during the Cold War except for the Cuban missile crisis." Although, there have been numerous warnings about the way humans are threatening life on earth, governments and the international community have so far failed to reduce this threat, and Ehrlich believes that there are several reasons for this. Among them are "the lack of education in basic science, especially among economists and politicians, who think economic growth is the cure for everything rather than what it is — the basic disease," the analyst said, adding that a key role is also being played by such negative traits if a human character as "greed, stupidity and arrogance." Answering the question about which measures he considers essential to change the situation for the better, the scientist said that, among other things, it's important to "supply everyone with modern contraception and backup abortion," "give women equal rights and opportunities with men," "end racial and religious discrimination so that all people are free to help solve the human dilemmas" and "redistribute wealth."