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### 1AC---adv---Inequality

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

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

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

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

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

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

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

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

#### Antitrust law permits labor market concentration---that fuels inequality

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

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

#### Inequality undermines US soft power

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

#### And causes neo-isolationist nativism---undermines global coop

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

#### Multilat solves extinction---it’s the pivotal moment to avert breakdown.

Edith M. Lederer 9/11/2021. Associated Press. "UN chief: World is at `pivotal moment' and must avert crises". Washington Post. 6-24-2021. https://www.washingtonpost.com/world/un-chief-world-is-at-pivotal-moment-and-must-avert-crises/2021/09/11/ff58806c-1323-11ec-baca-86b144fc8a2d\_story.html

UNITED NATIONS — U.N. Secretary-General Antonio Guterres issued a dire warning that the world is moving in the wrong direction and faces “a pivotal moment” where continuing business as usual could lead to a breakdown of global order and a future of perpetual crisis. Changing course could signal a breakthrough to a greener and safer future, he said.

The U.N. chief said the world’s nations and people must reverse today’s dangerous trends and choose “the breakthrough scenario.”

The world is under “enormous stress” on almost every front, he said, and the COVID-19 pandemic was a wake-up call demonstrating the failure of nations to come together and take joint decisions to help all people in the face of a global life-threatening emergency.

Guterres said this “paralysis” extends far beyond COVID-19 to the failures to tackle the climate crisis and “our suicidal war on nature and the collapse of biodiversity,” the “unchecked inequality” undermining the cohesion of societies, and technology’s advances “without guard rails to protect us from its unforeseen consequences.”

In other signs of a more chaotic and insecure world, he pointed to rising poverty, hunger and gender inequality after decades of decline, the extreme risk to human life and the planet from nuclear war and a climate breakdown, and the inequality, discrimination and injustice bringing people into the streets to protest “while conspiracy theories and lies fuel deep divisions within societies.”

In a horizon-scanning report presented to the General Assembly and at a press conference Friday, Guterres said his vision for the “breakthrough scenario” to a greener and safer world is driven by “the principle of working together, recognizing that we are bound to each other and that no community or country, however powerful, can solve its challenges alone.”

The report -- “Our Common Agenda” -- is a response to last year’s declaration by world leaders on the 75th anniversary of the United Nations and the request from the assembly’s 193 member nations for the U.N. chief to make recommendations to address the challenges for global governance.

In today’s world, Guterres said, “Global decision-making is fixed on immediate gain, ignoring the long-term consequences of decisions -- or indecision.”

He said multilateral institutions have proven to be “too weak and fragmented for today’s global challenges and risks.”

What’s needed, Guterres said, is not new multilateral bureaucracies but more effective multilateral institutions including a United Nations “2.0” more relevant to the 21st century.

“And we need multilateralism with teeth,” he said.

In the report outlining his vision “to fix” the world, Guterres said immediate action is needed to protect the planet’s “most precious” assets from oceans to outer space, to ensure it is livable, and to deliver on the aspirations of people everywhere for peace and good health.

He called for an immediate global vaccination plan implemented by an emergency task force, saying “investing $50 billion in vaccinations now could add an estimated $9 trillion to the global economy in the next four years.”

The report proposes that a global Summit of the Future take place in 2023 that would not only look at all these issues but go beyond traditional security threats “to strengthen global governance of digital technology and outer space, and to manage future risks and crises,” he said.

It would also consider a New Agenda for Peace including measures to reduce strategic risks from nuclear weapons, cyber warfare and lethal autonomous weapons, which Guterres called one of humanity’s most destabilizing inventions.

#### Soft power and international coop solve extinction.

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

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

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

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

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

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

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

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

#### Prioritizing worker welfare solves inequality

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

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

### 1AC---adv---Modelling

#### Global competition standards use consumer welfare

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

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

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

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

#### Global consumer welfare standard fuels populism

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

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

#### Extinction

Alex de Waal 16. Executive Director of the World Peace Foundation at the Fletcher School at Tufts University. 12-5-2016. “Garrison America and the Threat of Global War.” http://bostonreview.net/war-security-politics-global-justice/alex-de-waal-garrison-america-and-threat-global-war

Trump’s promises have been so vague that it will be hard for him to disappoint. Nonetheless, many of his supporters will wake up to the fact that they have been duped, or realize the futility of voting for a wrecker out of a sense of alienated desperation. The progressives’ silver lining to the 2016 election is that, had Clinton won, the Trump constituency would have been back in four years’ time, probably with a more ruthless and ideological candidate. Better for plutocratic populism to fail early. But the damage inflicted in the interim could be terrible—even irredeemable if it were to include swinging a wrecking ball at the Paris Climate Agreement out of simple ignorant malice.

Polanyi recounts how economic and financial crisis led to global calamity. Something similar could happen today. In fact we are already in a steady unpicking of the liberal peace that glowed at the turn of the millennium. Since approximately 2008, the historic decline in the number and lethality of wars appears to have been reversed. Today’s wars are not like World War I, with formal declarations of war, clear war zones, rules of engagement, and definite endings. But they are wars nonetheless.

What does a world in global, generalized war look like? We have an unwinnable “war on terror” that is metastasizing with every escalation, and which has blurred the boundaries between war and everything else. We have deep states—built on a new oligarchy of generals, spies, and private-sector suppliers—that are strangling liberalism. We have emboldened middle powers (such as Saudi Arabia) and revanchist powers (such as Russia) rearming and taking unilateral military action across borders (Ukraine and Syria). We have massive profiteering from conflicts by the arms industry, as well as through the corruption and organized crime that follow in their wake (Afghanistan). We have impoverishment and starvation through economic warfare, the worst case being Yemen. We have “peacekeeping” forces fighting wars (Somalia). We have regional rivals threatening one another, some with nuclear weapons (India and Pakistan) and others with possibilities of acquiring them (Saudi Arabia and Iran).

Above all, today’s generalized war is a conflict of destabilization, with big powers intervening in the domestic politics of others, buying influence in their security establishments, bribing their way to big commercial contracts and thereby corroding respect for government, and manipulating public opinion through the media. Washington, D.C., and Moscow each does this in its own way. Put the pieces together and a global political market of rival plutocracies comes into view. Add virulent reactionary populism to the mix and it resembles a war on democracy.

What more might we see? Economic liberalism is a creed of optimism and abundance; reactionary protectionism feeds on pessimistic scarcity. If we see punitive trade wars and national leaders taking preemptive action to secure strategic resources within the walls of their garrison states, then old-fashioned territorial disputes along with accelerated state-commercial grabbing of land and minerals are in prospect. We could see mobilization against immigrants and minorities as a way of enflaming and rewarding a constituency that can police borders, enforce the new political rightness, and even become electoral vigilantes.

Liberal multilateralism is a system of seeking common wins through peaceful negotiation; case-by-case power dealing is a zero-sum calculus. We may see regional arms races, nuclear proliferation, and opportunistic power coalitions to exploit the weak. In such a global political marketplace, we would see middle-ranking and junior states rewarded for the toughness of their bargaining, and foreign policy and security strategy delegated to the CEOs of oil companies, defense contractors, bankers, and real estate magnates.

The United Nations system appeals to leaders to live up to the highest standards. The fact that they so often conceal their transgressions is the tribute that vice pays to virtue. A cabal of plutocratic populists would revel in the opposite: applauding one another’s readiness to tear up cosmopolitan liberalism and pursue a latter-day mercantilist naked self-interest. Garrison America could opportunistically collude with similarly constituted political-military business regimes in Russia, China, Turkey, and elsewhere for a new realpolitik global concert, redolent of the early nineteenth-century era of the Congress of Vienna, bringing a façade of stability for as long as they collude—and war when they fall out.

And there is a danger that, in response to a terrorist outrage or an international political crisis, President Trump will do something stupid, just as Europe’s leaders so unthinkingly strolled into World War I. The multilateral security system is in poor health and may not be able to cope.

Underpinning this is a simple truth: the plutocratic populist order is a future that does not work. If illustration were needed of the logic of hiding under the blanket rather than facing difficult realities, look no further than Trump’s readiness to deny climate change.

We have been here before, more or less, and from history we can gather important lessons about what we must do now. The importance of defending civility with democratic deliberation, respecting human rights and values, and maintaining a commitment to public goods and the global commons—including the future of the planet—remain evergreen. We need to find our way to a new 1945—and the global political settlement for a tamed and humane capitalism—without having to suffer the catastrophic traumas of trying everything else first.

#### Specifically, the Philippines mirrors the US consumer welfare standard

Jose Maria L. Marella 18. J.D., University of the Philippines (UP) College of Law. “ADMINISTRATIVE WILL TO POWER: ARTICULATING THE GOALS OF ANTITRUST AND PROPOSING THEREFOR A REGULATORY FRAMEWORK” Philippine Law Journal. Vol. 91. 2018.

The complexities of modern government have often led Congress- whether by actual or perceived necessity-to legislate broad policy goals and general statutory standards, leaving the specific policy options to the discretion of an administrative body. 2 In this regard, the Philippine Competition Commission ("PCC")-the administrative body mandated to implement the Philippine Competition Act -has taken great strides in advancing the policy objectives of economic efficiency and consumer welfare. That the two policy objectives figure greatly in the exercise of the PCC's mandate is evident from its regulatory issuances and participation in relevant proceedings. A. Regulatory Issuances In its Implementing Rules and Regulations ("IRR"), the PCC adopts the "substantial lessening of competition" ("SLC") test,4 a Jurisprudential standard crafted and developed by foreign jurisdictions to weigh the anticompetitive effects of certain transactions. By assessing market indicators such as firm rivalry, prices, quality, and availability of goods and services, the SLC test filters out agreements that reduce competitive pressure among firms and disincentivize them from becoming more efficient and innovative.5 The IRR also allows the PCC to forbear-or desist from applying the provisions of the PCA-when, among other considerations, forbearance is consistent with the benefit and welfare of the consumers. 6 Economic efficiency and consumer welfare also take center stage in the PCC's Rules on Enforcement Procedure ("Enforcement Rules"), the rules and regulations governing hearings, investigation, and other proceedings on anti-competitive agreements, abuse of dominant market position, and other violations of the PCA.7 Preliminary inquiries-the PCC proceedings that parallel the prosecutor's preliminary investigation in criminal cases-are to be conducted with due regard to consumer welfare.8 Interim measures may be issued against entities when their acts would result in a material and adverse effect on consumers or competition in the market.9 Upon termination of enforcement proceedings, the PCC will determine the propriety of imposing conclusive remedies with the aim of maintaining, enhancing, or restoring competition in the market.10 Similar to the IRR, the PCC's Rules on Merger Procedure ("Merger Rules") employs the SLC test in determining whether a proposed merger or acquisition will, post-transaction, reduce economic efficiency or impair consumer welfare; in determining the appropriateness of imposing interim measures; 12 or in considering whether, before clearing a merger or acquisition, the parties must abide by certain conditions to remedy, prevent, or mitigate competitive harm. 13 In addition, pursuant to its market surveillance function, the PCC is empowered to motu proprio conduct a review of mergers that are reasonably foreseen to breach the SLC test. 14 Intervening by way of an amicus curiae brief, the PCC apprised the Supreme Court of the competition issue intertwined with the legal question in a pending case that assailed, as an ultra vires expansion of statutory language, the regulation issued by the Philippine Contractors Accreditation Board that created a nationality restriction that was unsupported by the governing statutory text.15 The PCC supported striking down the regulation, arguing that, on the basis of economic literature and empirical data, the nationality restriction constituted a regulatory barrier to entry that unduly favored domestic contractors to the detriment of foreign contractors. In its argument that the regulation inordinately restricts market competition, the PCC enunciated the following principles: Consumer welfare, which in this case refers to the welfare of both households and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality. Indeed, it is a settled principle in economics that if there are many players in the market, healthy competition will ensue. The competitors will try to outdo each other in terms of quality and price in order to survive and profit. Competition therefore results in better quality products and competitive prices, which redound to the benefit of the public.16 In its recent bid to take its legal scuffle with Globe and PLDT17 to the Supreme Court,18 the PCC donned its mantle "to level the playing field across all markets; to review the competitive implications of large transactions; and to actively investigate, prosecute, and sanction cases of cartelistic behaviors that prevent, restrict, or lessen market competition." 19 These mandates would be carried out to "[encourage] innovation among market players, [reward] their efficient and productive use of resources, and ultimately [redound] to the benefit of consumers by lowering prices and enhancing their right of choice over goods and services offered in the market. 20 Significantly, the general public has acquiesced to the perception that the PCC champions economic efficiency and consumer welfare. News reports have consistently adverted to the PCA as a landmark piece of legislation that will enhance and promote these two policy objectives. Even lawmakers have acknowledged the PCC's critical role in improving market competition. Senator Juan Miguel Zubiri, addressing PCC's representative, Commissioner Johannes Bernabe, in a legislative hearing concerning the telecommunications sector, stated: "I'm really one with you [...] So you guys have to help us out [...] We are fighting giants. But as I said, the least that can happen is [that they] shape up and give us better service[,] or the best is that more players can come in and give us the best service[.]"21 But are such policy objectives all there is to the PCA? Or does the statutory text, alone or in conjunction with related legal materials, admit of other governing principles? Addressing such questions is crucial as the PCA may also cover other goals that have not been explicitly recognized. The law, after all, admits of different interpretations. 22 This then requires stakeholders and other government bodies to defer to the "sound discretion of the government agency entrusted with the regulation of activities coming under [its] special and technical training and knowledge[.]" 23 In such case, the PCC might be undercutting its own potential to make even greater strides in other aspects of national development. Recognizing these other objectives will greatly influence the PCC's exercise of its mandate and, more importantly, could translate to better gains in national development. By no means does this Note claim that the PCC is severely limiting the exercise of its functions-whether consciously or subconsciously. Rather, it simply articulates other equally important antitrust considerations which can be construed from the statutory text-considerations which the PCC must also devote attention to, and which the public, considering the incipient but technical field of competition law, 24 must appreciate.

#### Antitrust is key to combat weakened growth and rising income inequality

Jose Maria L. Marella 18. J.D., University of the Philippines (UP) College of Law. “ADMINISTRATIVE WILL TO POWER: ARTICULATING THE GOALS OF ANTITRUST AND PROPOSING THEREFOR A REGULATORY FRAMEWORK” Philippine Law Journal. Vol. 91. 2018.

2. Income Inequality in the Philjopines Philippine economic literature establishes that market concentration, and conversely, weak market competition, **lead to limited growth and productivity.** The interplay of behavioral, regulatory, and structural constraints fosters within numerous industries the rise of an exclusive circle of dominant players.1 47 Antitrust analysis relies on economic indicators such as the price- cost margin ("PCM") and the Herfindahl-Hirschman Index ("HHI), a ratio used to determine industrial concentration, to compare the monopolistic price markup and competitive prices. "In the presence of market power, the firms will be able to set prices above those prevailing under competitive conditions, leading to excessive economic profits or 'rents'." 148 These measures **directly affect the distribution of wealth**. A high HHI means that the industry is concentrated; only a few firms deliver the bulk of industry output and reap the profits therein. On the other hand, a high PCM means that firms are effectively denying to consumers what they could have enjoyed under competitive conditions. Using such economic tools in conjunction with industry analysis, one study found that: (i) deliberate government coddling led to concentration in telecommunications, power, manufacturing, textiles, and cement; (ii) cartel-like behavior persists in flour milling, cement, and inter-island shipping; (iii) entry barriers led to comparatively high domestic prices when compared to border prices; and (iv) entry barriers **sustained the operation of inefficient firms and allowed them to generate monopoly rents.** 149 The flipside of the issue is that more inclusive industries lead to lower figures of the HHI and PCM. One of the Philippines' best chronicled "success stories" on the matter relates to the airline industry. Owing to the various trade liberalization measures implemented during the 1990s-among them the deregulation of aviation-PCMs declined from 67% to 48%. The entry of new firms served to depress monopolistic prices and disperse the 150 profits enjoyed by a previous monopoly. The income inequality concern becomes **even more alarming** when one considers the interests of those within the poorest income strata in the Philippines. Latest statistics indicate that poverty incidence 51 **is at 21.6%.** This figure expresses that, as a fraction of the total number of individuals in the Philippines, around one-fifth live below the poverty threshold. The hardest-hit sectors are the farmers, fisher folk, and children, with poverty incidences at 3 4 .3 %, 3 4 .0%, and 3 1. 4 %, respectively. 152 Moreover, total family expenditure is broken down into food at 42.8%; housing, water, 945 electricity, and other fuels at 1 .1%; and education at . %. Such **figures spell destitution, especially considering that basic commodities are prone to cartelization** while electricity and fuels industries are lorded over by oligopolies. Thus, the stage is **set for antitrust and competition policy to step in.** In order to include redistributive justice as among its "final causes," 154 the law's advocates must identify the specific mechanisms through which economic wealth can be equitably distributed.

**That’s key to prevent terrorism**

**Reuters 17**. “Uneven growth could spark extremism, instability in Southeast Asia – Malaysian PM.” Asian Correspondent. April 28. <https://asiancorrespondent.com/2017/04/uneven-growth-spark-extremism-instability-southeast-asia-malaysian-pm/#XXlMKJU7B9ixeQdP.97>

MALAYSIAN Prime Minister Najib Razak on Friday warned that Southeast Asian countries needed to ensure their economic growth was inclusive, or risk marginalised populations turning to violent extremism or even overturning political systems. Speaking at an event for entrepreneurs during the Association of South East Asian Nations (Asean) summit in Manila, Najib said the region was posting strong growth that could see Asean become the world’s fourth-largest economy, but that growth needed to be equitable. “We do not want our citizens to be marginalised in the age of extremism and radicalisation,” he said. “We know that those who see no hope in their own societies are more prone to the siren calls of terrorists who can and exploit their vulnerability and fill them with their lies.” Islamist extremism is expected to be high on the agenda during this week’s meetings, with fears for Indonesia, Malaysia and the Philippines about piracy and the rising threat of Islamic State. Of particular concern is the ease in which militants can acquire weapons, seek refuge with existing rebel groups and move between the many islands between the three countries.

#### Goes nuclear---terrorist-piracy nexus guarantees escalation

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The terrorism-piracy nexus and port security

In assessing the nature of maritime terrorist activity in Asia, it is important to study the terrorism-piracy nexus – not least because pirates have in the past financed terrorist activity.[59]Evidence of a linkage between the terrorists and pirates first emerged in May 2003, when the M/V Pen rider, a Malaysian-registered oil tanker, was attacked off the coast of Malaysia, and three crew members were taken hostage.[60] After ship owners paid $100,000 to free the crew, it emerged that the attackers were associated with the Free Aceh Movement, an insurgent group operating in Indonesia. The receipt of a ransom of $1.2 million by the Somali pirates to free a Spanish fishing vessel and 26 hostages in 2008 provided more proof of a possible link between terrorists and pirates; reportedly, the Al-Shabaab had received a five-percent cut. A year later, when the terror group hired pirates to smuggle in members of Al Qaeda to Somalia, the terror-piracy linkage seemed virtually certain.[61]

In recent years, terrorists and pirates have appeared to draw closer, even if the exact nature of their collaboration is not clear. Somali pirates and terrorists are said to have worked together in arms trafficking, and Al-Shabaab is said to have even have trained pirates for ‘duties’ at sea.[62]An investigation by the United Nations (UN) in 2017 found evidence of collusion between pirates and the Al Shabaab, including the possibility that pirates helped the latter smuggle weapons and ammunition into Somalia.[63] As discussed earlier, in Southeast Asia, the Abu Sayaff’s turn to piracy has resulted in millions earned via ransom payments.[64] Its cadres have used the revenue earned for pirate activity to expand the radical organisation’s presence in Southeast Asia.

The terror-piracy linkage is important because it highlights the causal mechanism behind rising violence at sea. The task of maritime security agencies becomes harder, however, when the lines between terrorism and piracy begin blurring, particularly in Southeast Asia, where the Abu Sayyaf has alternated between piracy and terrorism. Today’s pirates are trained fighters onboard speedboats, armed not only with automatic weapons, hand-held missiles and grenades but also and global positioning systems; professional mercenaries that loop effortlessly between rent-seeking and violent acts. Their objectives are as much ideological, as they are material.

ISPS code and littoral security

While most discussions around maritime terrorism presume a threat to sea-borne assets, port security constitutes the bigger challenge. Terrorists have long had seaports on their crosshairs, because of the latter’s role in trade and economic development. In recent years, there has been a significant increase in freight traffic, with key ports in Asia transformed into global trading hubs. In keeping with the growing importance of port-enabled trade, regional governments have taken better measures to protect ships and onshore facilities. In many ports, authorities have increased guards, gates, and security cameras, even introducing identification card programs to screen those with access to critical port infrastructure. The installation of radiation detectors has been particularly helpful in screening critical cargo and identifying suspicious shipments.

Yet, not even the best ports in Asia are able to track and monitor large containers comprehensively. With a rising quantum of cargo to be handled every day, port authorities find it impractical to scan each and every container being offloaded from cargo ships.[65]Container scanning in many ports is in fact a largely random exercise, with authorities insisting that shippers provide manifests of what is contained in cargo bins.[66]

The lack of effective checks on ports brings up the possibility of the use of containers as weapons to smuggle in arms, explosive materials or the terrorists themselves. While terrorists would not possibly target cargo ships directly, the latter could be used to transport weapons or to sabotage commercial operations. A dirty-bomb in an illicit cargo container of a cargo ship could cause a port shutdown and huge commercial disruption.[67] Even a failed attempt to smuggle a device into a major transshipment hub would significantly impact port operations.

After the 9/11 incident in the United States, the International Maritime Organization (IMO) had established the International Ship and Port Facility Security (ISPS) Code—a set of maritime regulations designed to help detect and deter threats to international shipping. The code subjects ships to a system of survey, verification, certification and control to ensure that the security measures prescribed by the IMO are implemented by member countries. It also provides a standardised, consistent framework for evaluating risk and gauging vulnerabilities of ships and ports facilities, laying down principles and guidelines for governments, port authorities and shipping companies, making compliance mandatory.[68]

The code, however, has not been effective in a way originally intended.[69]Firstly, the code is based on the experience of 9/11 and early piracy activity off Somalia. No amendments or revisions have been made with regard to new types of security threats encountered in recent years. The exclusion of vessels less than 500 tonnes, and all fishing vessels regardless of their size, is a further impediment in the code’s implementation, as terrorists have sought to use smaller boats to smuggle weapons and ammunition rarely subject to regulation.[70]

Another shortcoming is that the code does not include official monitoring procedures for security matters. Unlike the International Safety Management Code (ISM) that prescribes office audits by internal and external sources, the ISPS enumerates general guidelines and precautions—a standardised template for evaluating risks on many different types, sizes and categories of vessels and facilities.[71] The code also does not specify ways to strengthen capability to protect against new forms of terrorism, such as drone attacks.[72] With no legal obligation to implement regulations, port authorities are unwilling to make necessary investments in security measures.

The lack of national legislation/guidelines is another hurdle in the code’s implementation. Regional governments have neither enacted necessary domestic legislation to fight terrorists nor allotted resources to implement security measures.[73] In India, for instance, there is no comprehensive maritime security policy for protection of the commercial maritime infrastructure and supply chains.[74]A new Merchant Shipping Bill[75] in 2016 improved transparency and effective delivery of services, but has failed to address security concerns.

Given the complicated mix of variables contributing to port security, a study of security measures adopted by the civil aviation industry might offer some useful pointers. The latter’s efforts to prevent hijackings of commercial aircraft over the past four decades has been widely hailed as a success. Developed in the late 1960s, the international legal regime governing civilian flight operations was significantly upgraded after the attacks of 11 September 2001. The United States’ efforts to bring in legislation to regulate foreign airlines and flights from foreign airports have been particularly helpful. In concert with other international conventions drafted by the UN International Civil Aviation Organization (ICAO), the regulatory regime has deterred terrorists and criminals from targeting aircraft.[76]

This may hold important lessons for port security; in particular, approaches used in the international legal regime governing civil aviation to eliminate safe havens for pirates and terrorists by ensuring legal accountability. A study of security in the aviation sector could offer important tips on how port security systems could be mobilised to encourage best management practices; the importance of freezing assets of those who fund piracy enterprises; and the utility of enhancing communication and coordination among the various stakeholders relevant to the fight against piracy and terrorism.[77]

A next terrorist attack: Gauging the odds

To design policies that help combat maritime terrorism it is important to assess the likely nature of future attacks and their probable targets. Future terrorist attacks could be directed against four kinds of targets: warships, supertankers, passenger ships and port facilities. The most vulnerable and attractive targets remain tankers out at sea. The recent attacks on tankers in the Persian Gulf revealed that the threat is evolving and could now include unmanned vehicles.[78] More damaging would be the seizure and sinking of an oil-carrying tanker in a congested space, crippling the flow of maritime traffic. To get a sense of the extent of damage such an attack would cause, the Limburg incident in 2002 caused a massive spillage of oil (almost 90,000 tonnes) that took many weeks to clear.[79]

Another kind of attack could be on cruise ships out at sea. Big cruise ships are a lucrative target since they are lightly defended and relatively easily accessible.[80]An enquiry into the Achille Lauro incident in October 1984 highlighted fundamental deficiencies in safety procedures. Apparently, checks on passengers in the run-up to that fateful incident had not been foolproof. Despite acting nervously and even displaying anti-social behaviour, the Palestinian hijackers did not arouse the suspicions of passengers and crew.[81] While safety procedures have since improved, security procedures at ports and aboard cruise ships (with certain exceptions) are far from immaculate. During the Super Ferry incident in the Philippines in 2004, Abu Sayyaf operatives disguised as tourists smuggled 20 sticks of explosives that were stored inside an emptied out TV set.[82] There is some evidence that cruise shipping companies in Asia and Africa continue with the same lax approach that enabled that devastating attack.

The most likely venue of a future terrorist strike, however, might be inside a port facility, and it could possibly involve a ‘lone wolf’ with a loose affiliation to a bigger terrorist group. Ports are an attractive target because many of the tactical problems that terrorists face in orchestrating attacks on ships in the high seas do not apply to harbors, ports, or shore-based maritime facilities. Terrorists realise that the containerised supply chain is complex, and creates many opportunities for isolated acts of terrorism. An ineffective point of check, for instance, could allow a jihadi inside a container to detonate a vast quantity of explosives or a low-grade nuclear device; inadequate surveillance in a vessel could lead a jihadi diver to plant an explosives improvised explosive device (IED). While many ports have installed radiation detectors to combat the threat of IED, the pace of installation has been slow, and smaller ports remain vulnerable.

#### Extinction.

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

#### The plan solves---US antitrust law is modeled

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The “shot in the dark” that was the U.S. antitrust law system is today no longer solely a domestic field of law. It is now also a critically important component of global economic policy! The system that U.S. judges had evolved to deal with purely domestic problems and that relied on little more than confidence in the capacity of courts to develop reasonable responses to conflicts has been transformed into the central player in efforts to respond effectively to economic and other forms of globalization. It is now a U.S. export product, and the stakes are enormous. What directions and forms will the rules of competition take? Treatment of these issues will be a factor in the future of many countries, including the U.S., and for more than two decades Chicago-Kent has brought transnational competition law to our students, and Chicago-Kent faculty have contributed to the international discussion of these issues. A. Foreign Interactions and Perceptions U.S. antitrust now plays on a global stage, and much will depend on how foreign experts, lawyers, government officials and business leaders see U.S. antitrust. They will make decisions about what to do in their own countries and on the international level. This means that their perspectives on the U.S. system are critical to its roles both at home and abroad, and foreign images of U.S. antitrust have changed radically. Prior to the Second World War, those in Europe who knew anything about U.S. antitrust law (and they were few) generally considered it a mistake. They tended to see it as a failure that actually created more harm than good by forcing companies to merge rather than cooperate. This view predominated in large measure until after the Second World War. The Europeans were developing a different concept of competition law that emphasized administrative control of dominant firms. This conception of competition was spreading rapidly in Europe in the 1920s, but depression and war led to its virtual abandonment. After that war ended, however, U.S. antitrust law became associated with U.S. economic dominance in the “free world.” The real and imagined connections between economic concentration and military expansion in both Germany and Japan convinced many that U.S.-style antitrust law should be used to combat such concentrations. U.S. occupation forces in Germany and Japan imposed U.S. antitrust ideas during the occupation period, and the U.S. insisted that both countries either enact or maintain competition law after the occupation. This increased awareness of these ideas abroad. Perhaps more important, however, was the perception that antitrust was a source of strength for the U.S. economy and thus a potential spur to growth that other countries could employ. U.S.-style antitrust did not, however, always fit well with European legal traditions and institutions, and in most European countries skepticism toward the U.S. model limited progress in protecting competition. In Germany, however, a separate set of ideas about how to protect competition developed in the 1930s and 1940s in the underground, and after the war it became the basis for German antitrust law. From here it spread to the European level and became part of the process of Euro- pean integration. The basic idea of U.S. antitrust law—i.e., protecting the competitive process from restraints—was part of this model of competition law, but the model itself was conceptually and institutionally quite distinct. European scholars and officials in these areas often looked to U.S. antitrust for comparisons and insights into problems, but there was relatively little interaction between U.S. and European forms of competition law until the 1990s. In the 1990s these relationships became far closer and more important for both the U.S. and Europeans. Moreover, the fall of the Soviet Union precipitated widespread interest in market-based approaches around the world and revived the messianic tenor of the U.S. antitrust law community. Many countries that had socialist or other command-based approaches to the organization of economic activity now introduced antitrust laws or significantly increased their investment in the enforcement of such laws. Often they looked to U.S. antitrust officials, lawyers and scholars for help in implementing or evaluating their new activities.

### 1AC---adv---Democracy

#### Congressional inaction in antitrust shifts power to less democratic institutions

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

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

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

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

#### That collapses court legitimacy and constitutional SOP

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

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

#### Judicial activism collapses democracy.

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

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

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

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

3. Implications for Interpretation

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

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

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

#### Congressional action key to democracy---alternative cedes power.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

The recommendation that Congress shift its focus to major issues is particularly critical to reinvigorating Congress’s role in antitrust policy. It is simply more important to probe whether merger enforcement has now been virtually limited to mergers to monopoly than to hold hearings into whether a particular merger in a particular industry is a good idea. Similarly, reasonable people can differ over whether a particular antitrust provision should be enforced more vigorously, less vigorously, or simply repealed, but we doubt any Congress since the passage of the Sherman Act would simply say, “We don’t care, do whatever you want.” We may not like the results of what Congress says on any particular issue, but it remains the only directly democratically accountable branch of government and the one most clearly charged with setting the broad parameters of fundamental public policy. It should speak, as it does in most other areas of our complex economy, and not have its silence used as an excuse for self-interested actors to shift power in their favor when the legislature chooses to turn to other pressing issues of the day

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

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

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

#### Democracy solves every impact---it’s comparatively more stable than autocracies

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

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

### 1AC---Plan

#### The United States federal government should prohibit private sector business practices that violate an antitrust worker welfare standard.

### 1AC---Solvency

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

#### Worker welfare can easily be assessed by the Courts.

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

Just as consumer welfare can be measured through economic factors like price, output, quality, and innovation, **courts and economic experts can assess worker welfare through a set of analogous factors:** wages and benefits, hours, working conditions,65 and training. One major tension between these two standards is that workers benefit from higher wages while consumers benefit from lower prices, but these factors capture **similar characteristics of equilibria in both markets**.66 Wages and hours are the labor-market analogs of price and quantity, and benefits can be considered along with wages as a type of compensation. **Working conditions reflect heterogeneity within a single type of employment**, just as quality reflects heterogeneity within a single type of product. And training reflects how labor markets can be dynamic, just as innovation reflects how product markets can be dynamic: that is, labor productivity can improve over time, just as firm productivity can improve over time. As in product-market analysis, courts and economic experts can assess how a contested activity

**[marked]**

(e.g., a merger) **affects these factors and estimate the net effect on worker welfare.** A worker welfare standard would be similar to a consumer welfare standard in that much of its application would fall on economic experts, whose work would be assessed and weighed by courts. Of course, some cases will be clearer and may be amenable to per se analysis, like an agreement between firms to fix wages. But, as in product markets, other cases will be subtle, and economics will have a role to play. **Just as economic models are used to forecast** the effects of certain market events on price and quantity, and aggregate those effects to estimate net effects on consumer welfare,67 economics will also be instrumental in forecasting the effects of market events on wages and hours, and aggregating those effects to estimate net effects on worker welfare. Antitrust analysis is highly technical in the status quo,68 and **a worker welfare standard would not be any different in its reliance on economics**. The main difference is that a worker welfare standard **focuses attention on the interests of workers, who are often neglected** despite their vulnerability to rent-extractive firm behavior, and recognizes that advancing the interests of workers may **require more than advancing the interests of consumers.**

## 2AC

### 2AC---inequality adv

### 2AC---modelling adv

### 2AC---democracy adv

### 2AC---states counterplan

#### State labor actions get pre-empted.

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

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

#### FTC is key.

Garza et. al. 07. Chair of the Antitrust Modernization Commission, a bi-partisan blue ribbon commission created by Congress to advise Congress and the President on the state of U.S. Antitrust law enforcement and former DOJ Antitrust Deputy Assistant Attorney General for Regulatory Affairs. “Antitrust Modernization Commission: Report and Recommendations: Chapter 2,” p. 216-217. Antitrust Modernization Commission. 2/4/2007. https://govinfo.library.unt.edu/amc/report\_recommendation/chapter2.pdf

The Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have made extensive efforts to improve cooperation between the United States and other nations’ antitrust enforcers.26 Both U.S. antitrust agencies “enjoy [a] strong cooperative relationship[] with a large and increasing number of foreign enforcement agencies, enabling close cooperation on cases, coordination on international antitrust policy, and provision of technical assistance to new agencies around the world.”27 Whereas U.S. requests for cooperation previously took up to a year to be processed,28 today antitrust agencies worldwide have a “pick up the phone” approach toward sharing information and assisting each other in their antitrust enforcement efforts.29 This high degree of cooperation has facilitated convergence of both procedural and substantive aspects of antitrust law.

The efforts of the U.S. antitrust agencies have been advanced in part through their participation in two organizations, the OECD and the ICN.30 The OECD was created in 1961 to expand free trade and improve development in member countries.31 As part of these efforts, it created a Competition Law and Policy Committee that provides a variety of means for countries to share their best practices regarding antitrust and competition policy.32 The ICN, in comparison, is relatively new, but has a more broad-based membership. It was created after ICPAC called for the creation of a “Global Competition Initiative” to address antitrust enforcement in a growing globalized economy.33 Membership in the ICN has increased from fourteen jurisdictions when it began in 200134 to ninety-seven members from eighty-five jurisdictions in 2007.35

The ICN and OECD have promulgated “best practices” on merger reviews and cartel investigations and continue to work on convergence of substantive and procedural law.36 For example, the ICN is currently undertaking a study of unilateral conduct standards with the goal of developing a consensus on the objectives and legal and economic bases of enforcement regarding unilateral conduct.37 The ICN in the past has developed principles of best practices regarding merger notification regimes, with the objective of highlighting the importance of transparency and clarity in each jurisdiction’s rules regarding filing requirements and review.38 Overall, through their efforts, these institutions have had a meaningful influence in “promoting convergence in antitrust enforcement”39 and have contributed to the “significant recent progress in reducing conflicts by increasing cooperation, information sharing, and networking.”40 Indeed, their successes are reflected at least in part by the fact that the vast majority of international investigations are conducted without incident.41

#### The DOJ and FTC undermine states.

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

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

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

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#### FTC gets nuked as a result of the counterplan---means it can’t solve, BUT the plan fiats they legislative backing and court victory---key to legitimacy and funding.

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

#### Antitrust is key to legitimacy

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While labor law reform is also necessary, this is not a problem that antitrust law can afford to outsource or ignore. Indeed, antitrust law’s current bias against democratic cooperation—including coordination among workers—and in favor of top-down corporate control has contributed more broadly to the institutional weakness and perceived illegitimacy of workers’ collective action rights, even when those rights are grounded in labor law.

Given the original purposes of antitrust law, its current stance toward workers is perverse. It should do more to restrain the control exerted by powerful firms, from franchisors to ride-share platforms to trucking companies, over workers and small players. At the same time, it should not impose obstacles upon workers’ attempts to engage in collective bargaining or other collective action in order to better their conditions, by balancing the bargaining power of more powerful contracting parties. And in navigating these and all other issues arising under antitrust law, decision-makers should not justify harms to workers by means of often-speculative benefits to consumers.

#### Perm---the regulation is the remedy---solves the net benefit.

Alison Jones and Renato Nazzini 19. King's College London – The Dickson Poon School of Law. The Effect of Competition Law on Patent Remedies. In B. Biddle, J. L. Contreras, B. J. Love, & N. V. Siebrasse (Eds.), Patent Remedies and Complex Products: Toward a Global Consensus Cambridge University Press, Cambridge. https://kclpure.kcl.ac.uk/portal/files/102369282/The\_Effect\_of\_Competition\_Law\_on\_Patent\_Remedies.pdf

Remedies available for violations of antitrust and competition law broadly include monetary, behavioral, or injunctive remedies.141 When actions are brought by enforcement agencies, monetary remedies typically take the form of penalties and fines intended to deter the particular harm in question and to punish the liable party. In private actions, monetary damages are typically compensatory, though in some jurisdictions, particularly in the U.S., enhanced monetary awards (treble damages and attorneys’ fees, this latter element as an exception to the general rule of non-recoverability of legal costs in that jurisdiction) may be available.142

In addition to compensatory damages, both private parties and enforcement agencies may seek behavioral remedies that are intended to deter, halt, and correct violations.143 Injunctive relief in antitrust cases generally seeks to remedy a harm caused by anticompetitive conduct and to prevent its recurrence. Thus, in the case of price fixing between competitors, remedial measures may simply prohibit further price fixing. In monopolization or dominance cases, a remedial order may prohibit a dominant firm from carrying on a particular business within certain markets or, exceptionally, require a firm to divest certain business units or subsidiaries. The range of remedies in antitrust cases is thus quite broad, including cease and desist orders (for example, prohibiting the seeking of an injunction or the charging of exploitative royalties), affirmative obligations (for example, an obligation to license or to license on competition compliant terms), structural remedies (such as structural separation of business units), and other sanctions. Such remedies may impact, or override, rights and remedies conferred by patent law by, for example, preventing a patent owner from seeking an injunction (through a cease and desist order), ordering a compulsory licence, nullifying the sale of patent rights, or interfering with licensing arrangements or terms. They may also subsequently require close scrutiny or monitoring for compliance. In general, the scope of antitrust injunctive relief sought by enforcement agencies can be as broad as necessary “to bring about the dissolution or suppression of” the illegal conduct.144 As such, these remedies, which must account for effects on the public and the marketplace, are considered to be more sweeping forms of relief than injunctive relief between private litigants.145

A decision-maker might be reluctant to intervene to prohibit certain conduct under competition law—for example, a refusal to license or the seeking of an injunction by a patentee—if it believes that a simple cease and desist order, prohibiting the unlawful conduct identified, and its recurrence, would be insufficient to ensure that the infringement is brought to an end. If an effective remedy requires more, the court or agency must undertake both a careful consideration of the appropriate terms of dealing (especially pricing) as well as the realistic prospects for monitoring of that behavior in the future. In the U.S., for example, the Supreme Court has on some occasions expressed reluctance to find that a refusal to deal or a margin squeeze constitutes a substantive antitrust violation in circumstances where such a violation would require the courts to act as central planners, involved in the construction of “fair” access terms or the setting of “fair” prices or spreads between prices, a task to which the Supreme Court felt the courts were ill-suited.146 In the EU, the difficulty of ensuring the effectiveness of the antitrust intervention has also proved to be real. In the Microsoft case,147 for example, the Commission and Microsoft, following the Commission’s initial fining of Microsoft for its failure to supply interoperability information, wrangled for several years over the appropriate terms for supplying the interoperability information; eventually the Commission fined Microsoft a second time for its failure to comply.148

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#### Regulated capitalism solves war, environment, and quality of life---alternatives increase degradation and poverty. Prefer empirical and measurable indicators.

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

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

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

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

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

Arguments for and against Forms of Capitalism

The Argument against Capitalism

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

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

The Argument for Well-Regulated Capitalism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Cap is sustainable.

Rainer Zitelmann 21. German historian and author of *The Rich in Public Opinion*. "Consumption Presumption: Are Human Beings Destroying the World?" National Interest. 2-12-2021. https://nationalinterest.org/feature/consumption-presumption-are-human-beings-destroying-world-178114

Some people claim that we need to cut our consumption or there will be no hope for the planet. Such claims are based on the thesis that continued growth increases the rate at which the earth’s finite resources are consumed and, moreover, leads to irreversible climate change. And such warnings are by no means new. In 1970, for instance, the Club of Rome attracted a great deal of attention with the publication of The Limits to Growth. A Report for the Club of Rome’s Project on the Predicament of Mankind, which has to date sold more than thirty million copies in thirty languages. The book warned people to change their ways and had a clear message: the world’s raw materials, and in particular, oil would soon be used up. In twenty years, the scientists predicted, we would have used the very last drop of oil. Of course, the Club of Rome’s models for the depletion of oil—and almost all other major raw materials—were wrong. According to the scenarios presented in The Limits to Growth, we should now be living on a planet that has been devoid of natural gas, copper, lead, aluminum and tungsten for decades. And we were supposed to have run out of silver in 1985. Despite the bleak forecasts, as of January 2020, the United States Geological Survey estimated silver reserves worldwide at 560,000 tons.

More from Less

Employing an extensive array of data, the American scientist Andrew McAfee proves in his book More from Less that economic growth is no longer coupled to the consumption of raw materials. Data for the United States, for example, show that of seventy-two resources, from aluminum to zinc, only six are not yet post-peak. Nevertheless, despite the fact that the U.S. economy has grown strongly in recent years, consumption of many commodities is actually decreasing.

Back in 2015, the American environmental scientist Jesse Ausubel wrote an essay, “The Return of Nature: How Technology Liberates the Environment,” showing that Americans are consuming fewer and fewer raw materials per capita. Total consumption of steel, copper, fertilizer, wood and paper, which had previously always risen in line with economic growth, had plateaued and was now in constant decline.

Such across-the-board reductions in natural resource consumption are only possible because of much-maligned capitalism: companies are constantly developing more efficient production methods and reducing the amount of raw materials they consume. Of course, they are not doing this primarily to protect the environment but to cut costs.

What's more, a constant stream of innovations has promoted the trend of miniaturization or dematerialization. Just think of your smartphone. How many devices has your smartphone replaced and how many raw materials did they use to consume?

Calculator

Telephone

Video camera

Alarm clock

Voice recorder

Navigation system

Camera

CD-player/radio

Compass

Nowadays, many people no longer have a fax machine or street atlas because they have everything they need on their smartphone. Some even use their phones instead of a wristwatch. You used to need four separate microphones in your telephone, cassette recorder, Dictaphone and video camera, today you just need one—in your smartphone.

Fighting climate change with nuclear energy

The finite nature of the world’s natural resources is one argument against growth, climate change is another. Let’s take China as an example: China currently emits more CO2 than any other country in the world and is building a number of new nuclear power plants in order to achieve carbon neutrality by 2060. With the new build program well underway, China’s first new-generation nuclear power plant recently went into operation.

In the very near future, China intends to start exporting power plants. The latest generation of nuclear power plants is much safer than earlier models—and can play a pivotal role in the fight against climate change. In the United States, Joe Biden is already evaluating the advantages of small modular reactor (SMR) nuclear power plants. As the name suggests, SMRs are smaller than traditional nuclear fission reactors and offer a maximum capacity of three hundred megawatts. In the United Kingdom, for example, a consortium led by Rolls-Royce has announced plans to build up to sixteen SMR power plants.

So far, two reactors of this type are in operation, both onboard the floating nuclear power plant  “\Akademik Lomonosov, which supplies heat and electricity to the Siberian city of Pevec and its one hundred thousand inhabitants.

Anticapitalists blame capitalism for resource consumption and climate change. But political decisions—such as Germany’s decision to phase out nuclear energy—frequently have a negative impact on climate change.

Telling people to cut their consumption must seem like pure mockery to the hundreds of millions of people around the world who are still living in extreme poverty. What they need is more capitalism and economic growth. Just like in China, where the number of people living in extreme poverty has fallen from 88 percent in 1981 to less than 1 percent today. Andrew McAfee’s book has an optimistic message about how we don't have to turn back the clocks and cut our consumption: capitalism and technological progress are allowing us to steward the world’s resources, rather than stripping them bare.

#### They need to win a specific solution to solve neolib, not just that the system is bad --- takes out alt solvency.

Andrew SAYER 95, Reader in Social Theory and Political Economy at Lancaster University [*Radical Political Economy: A Critique*, 1995, p. 33-34]

Any criticism presupposes the possibility of a better way of life; to expose something as illusory or contradictory is to imply the possibility and desirability of a life without those illusions and contradictions. This much has been established by critical theorists such as Habermas and Apel. Yet the notion that critique implies a quest for the good is a highly abstract one. Up to a point, particular critiques do imply something a little more specific than the standpoint of a better life. The critique of capitalism's anarchic and uneven development implies a critical standpoint or contrast space of an imagined society with a rationally ordered and even process of development. The critique of class points to the desirability of a classless society. Naturally, society would be better if its illusions, conflicts and contradictions were reduced, but we naturally want to know how this could be achieved. The desirability of a life without contradictions or illusions does not make it feasible.

Critical social science does not merely identify illusions, irrationality or contradictions but attempts to provide explanations of their sources, locating the 'unwanted determinations' of behaviour, as Bhaskar (1989) puts it. It would be strange, to say the least, if an analysis of the causes of problems such as hunger and exploitation were unable to indicate anything about alternatives which would eliminate them. If a critical theory cannot begin to indicate how to eliminate problems we must inevitably be suspicious of its claims to have identified their causes. If the alternative implied by a critical standpoint is not feasible, then any critique made from that standpoint is thereby seriously weakened. Not to put too fine a point on it, the critique of, say, capitalism's anarchic and uneven development would lose much of its force if all [END PAGE 33] advanced economies were necessarily anarchic and uneven in their development, though one could still criticize advanced economies - not just capitalist ones - from the very different standpoint of a 'deep ecology', calling for a return to small-scale, more primitive economies (Dobson, 1990).

We need to know enough about the critical standpoint and the implied alternative to be able to judge first whether it really is feasible and desirable. Since knowledge is 'situated' and bears the mark of its author's social position, this includes assessing whose standpoint it is made from. Does it privilege the position of a particular group (e.g. male workers, advanced countries)? Does it imply a society without difference? If it suggests greater equality on whose terms is equality to be defined?7 We have also to ask whether remedying one set of problems would generate others (it usually does), and whether these would be worse than the original problems. This is rarely considered in radical political economy, the usual implicit assumption being that all bad things go together in capitalism and all good things under socialism/communism. Yet it is possible that some of the 'contradictions' involve dilemmas which can't be eliminated along with capitalism. Evaluations in terms of desirability therefore need to be cross-checked with assessments of feasibility, and optimistic assumptions of inevitable improvement suspended.

There are two kinds of feasibility which might be considered:

1 whether a certain desired end-state or goal can be realized - for example, how people can be politically mobilized to make it happen; and

2 whether, assuming enough people are willing to try to make it happen, the goal or end-state is feasible in itself, e.g. could one have an advanced economy without money?

It is usually only the first of these questions that radicals address, the standard response to utopian discussions being not 'would it work?' but 'yes but how are you going to get from here to there?' But while many might think it idle to ignore (1), it is surprising how little attention is given to (2), as if the journey mattered more than the destination. I fully accept that I am not offering suggestions on (1) in this book, and only ideas pertinent to (2): but then I don't see how large-scale political mobilization can precede a well-worked out conception of a feasible alternative.

#### Even if growth is imperfect, the transition away fails.

Hubert Buch-Hansen 18. Associate Professor, Department of Business and Politics, Copenhagen Business School. “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy.” *Ecological Economics* 146: 157-63. Emory Libraries.

Still, the degrowth project is nowhere near enjoying the degree and type of support it needs if its policies are to be implemented through democratic processes. The number of political parties, labour unions, business associations and international organisations that have so far embraced degrowth is modest to say the least. Economic and political elites, including social democratic parties and most of the trade union movement, are united in the belief that economic growth is necessary and desirable. This consensus finds support in the prevailing type of economic theory and underpins the main contenders in the neoliberal project, such as centre-left and nationalist projects. In spite of the world's multidimensional crisis, a pro-growth discourse in other words continues to be hegemonic: it is widely considered a matter of common sense that continued economic growth is required.

It is also noteworthy that economic and political elites, to a large extent, continue to support the neoliberal project, even in the face of its evident shortcomings. Indeed, the 2008 financial crisis did not result in the weakening of transnational financial capital that could have paved the way for a paradigm shift. Instead of coming to an end, neoliberal capitalism has arguably entered a more authoritarian phase (Bruff, 2014). The main reason the power of the pre-crisis coalition remains intact is that governments stepped in and saved the dominant fraction by means of massive bailouts. It is a foregone conclusion that this fraction and the wider coalition behind the neoliberal paradigm (transnational industrial capital, the middle classes and segments of organized labour) will consider the degrowth paradigm unattractive and that such social forces will vehemently oppose the implementation of degrowth policies (see also Rees, 2014: 97).

While degrowth advocates envision a future in which market forces play a less prominent role than they do today, degrowth is not an antimarket project. As such, it can attract support from certain types of market actors. In particular, it is worth noting that social enterprises, such as cooperatives (Restakis, 2010), play a major role in the degrowth vision. Such enterprises are defined by being ‘organisations involved at least to some extent in the market, with a clear social, cultural and/or environmental purpose, rooted in and serving primarily the local community and ideally having a local and/or democratic ownership structure’ (Johanisova et al., 2013: 11). Social enterprises currently exist at the margins of a system, in which the dominant type of business entity is profit-oriented, shareholder-owned corporations. The further dissemination of social enterprises, which is crucial to the transitions to degrowth societies, is – in many cases – blocked or delayed as a result of the centrifugal forces of global competition (Wigger and Buch-Hansen, 2013). Overall, social enterprises thus (still) constitute a social force with modest power.

Ougaard (2016: 467) notes that one of the major dividing lines in the contemporary transnational capitalist class is between capitalists who have a material interest in the carbon-based economy and capitalists who have a material interest in decarbonisation. The latter group, for instance, includes manufacturers of equipment for the production of renewable energy (ibid.: 467). As mentioned above, degrowth advocates have singled out renewable energy as one of the sectors that needs to grow in the future. As such, it seems likely that the owners of national and transnational companies operating in this sector would be more positively inclined towards the degrowth project than would capitalists with a stake in the carbon-based economy. Still, the prospect of the “green sector” emerging as a driving force behind degrowth currently appears meagre. Being under the control of transnational capital (Harris, 2010), such companies generally embrace the “green growth” discourse, which ‘is deeply embedded in neoliberal capitalism’ and indeed serves to adjust this form of capitalism ‘to crises arising from contradictions within itself’ (Wanner, 2015: 23).

In addition to support from the social forces engendered by the production process, a political project ‘also needs the political ability to mobilize majorities in parliamentary democracies, and a sufficient measure of at least passive consent’ (van Apeldoorn and Overbeek, 2012: 5–6) if it is to become hegemonic. As mentioned, degrowth enjoys little support in parliaments, and certainly the pro-growth discourse is hegemonic among parties in government.5 With capital accumulation being the most important driving force in capitalist societies, political decision-makers are generally eager to create conditions conducive to production and the accumulation of capital (Lindblom, 1977: 172). Capitalist states and international organisations are thus “programmed” to facilitate capital accumulation, and do as such constitute a strategically selective terrain that works to the disadvantage of the degrowth project.

The main advocates of the degrowth project are grassroots, small fractions of left-wing parties and labour unions as well as academics and other citizens who are concerned about social injustice and the environmentally unsustainable nature of societies in the rich parts of the world. The project is thus ideationally driven in the sense that support for it is not so much rooted in the material circumstances or short-term self-interests of specific groups or classes as it is rooted in the conviction that degrowth is necessary if current and future generations across the globe are to be able to lead a good life. While there is no shortage of enthusiasts and creative ideas in the degrowth movement, it has only modest resources compared to other political projects. To put it bluntly, the advocates of degrowth do not possess instruments that enable them to force political decision-makers to listen to – let alone comply with – their views.

As such, they are in a weaker position than the labour union movement was in its heyday, and they are in a far weaker position than the owners and managers of large corporations are today (on the structural power of transnational corporations, see Gill and Law, 1989).

6. Consent

It is also safe to say that degrowth enjoys no “passive consent” from the majority of the population. For the time being, degrowth remains unknown to most people. Yet, if it were to become generally known, most people would probably not find the vision of a smaller economic system appealing. This is not just a matter of degrowth being ‘a missile word that backfires’ because it triggers negative feelings in people when they first hear it (Drews and Antal, 2016). It is also a matter of the actual content of the degrowth project.

Two issues in particular should be mentioned in this context. First, for many, the anti-capitalist sentiments embodied in the degrowth project will inevitably be a difficult pill to swallow. Today, the vast majority of people find it almost impossible to conceive of a world without capitalism. There is a ‘widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible to even imagine a coherent alternative to it’ (Fisher, 2009: 2). As Jameson (2003) famously observed, it is, in a sense, easier to imagine the end of the world than it is to imagine the end of capitalism. However, not only is degrowth – like other anti-capitalist projects – up against the challenge that most people consider capitalism the only system that can function; it is also up against the additional challenge that it speaks against economic growth in a world where the desirability of growth is considered common sense.

Second, degrowth is incompatible with the lifestyles to which many of us who live in rich countries have become accustomed. Economic growth in the Western world is, to no small extent, premised on the existence of consumer societies and an associated consumer culture most of us find it difficult to completely escape. In this culture, social status, happiness, well-being and identity are linked to consumption (Jackson, 2009). Indeed, it is widely considered a natural right to lead an environmentally unsustainable lifestyle – a lifestyle that includes car ownership, air travel, spacious accommodations, fashionable clothing, an omnivorous diet and all sorts of electronic gadgets. This Western norm of consumption has increasingly been exported to other parts of the world, the result being that never before have so many people taken part in consumption patterns that used to be reserved for elites (Koch, 2012). If degrowth were to be institutionalised, many citizens in the rich countries would have to adapt to a materially lower standard of living. That is, while the basic needs of the global population can be met in a non-growing economy, not all wants and preferences can be fulfilled (Koch et al., 2017). Undoubtedly, many people in the rich countries would experience various limitations on their consumption opportunities as a violent encroachment on their personal freedom. Indeed, whereas many recognize that contemporary consumer societies are environmentally unsustainable, fewer are prepared to actually change their own lifestyles to reverse/address this.

At present, then, the degrowth project is in its “deconstructive phase”, i.e., the phase in which its advocates are able to present a powerful critique of the prevailing neoliberal project and point to alternative solutions to crisis. At this stage, not enough support has been mobilised behind the degrowth project for it to be elevated to the phases of “construction” and “consolidation”. It is conceivable that at some point, enough people will become sufficiently discontent with the existing economic system and push for something radically different. Reasons for doing so could be the failure of the system to satisfy human needs and/or its inability to resolve the multidimensional crisis confronting humanity. Yet, various material and ideational path-dependencies currently stand in the way of such a development, particularly in countries with large middle-classes. Even if it were to happen that the majority wanted a break with the current system, it is far from given that a system based on the ideas of degrowth is what they would demand.

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

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

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

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

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

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

The choice before us is techno-optimism or barbarism.

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

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

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

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

The preconditions for green industrialization can be made in America.

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

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

### 2AC---econ da

#### Antitrust law is needed to solve labor monopsony’s economic harms.

Ioana Marinescu & Eric A. Posner 18. \*Marinescu is Assistant Professor, School of Social Policy & Practice, University of Pennsylvania, and a faculty research fellow at the National Bureau of Economic Research. \*Posner is Kirkland & Ellis Distinguished Service Professor, University of Chicago. “WHY HAS ANTITRUST LAW FAILED WORKERS?” 12-21-18. <https://www.cornelllawreview.org/wp-content/uploads/2020/09/Marinescu-Posner-final.pdf>

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

#### Increasing worker welfare strengthens innovation.

Yu Wei et al. 20. School of Finance, Yunnan University of Finance and Economics, Kunming, China. \*Haoxi Nan School of Economics and Management, Southwest Jiaotong University, Chengdu, China. \*Guiwu Wei School of Business, Sichuan Normal University, Chengdu, China. "The impact of employee welfare on innovation performance: Evidence from China's manufacturing corporations." Science Direct. October 2020. https://www.sciencedirect.com/science/article/pii/S0925527320301389

As innovation requires the active participation of every employee in the corporation (Dougherty, 1992; Van de Ven, 1986), it is important to increase employee participation in innovation activities. Implementing a series of employee-friendly policies, such as improving employee compensation (Mas, 2006), providing employees with a more comfortable working environment (Faleye and Trahan, 2011), and offering work-family benefits (Meyer et al., 2001), can alleviate employees’ worries, improve their recognition by the corporation, reduce the employee turnover rate and help retain outstanding talents. Therefore, employee welfare may enhance corporate innovation by helping the corporation to retain outstanding talents.

Taylor (1911) points out that if employees are regarded as unskilled labor without special status, then employee welfare is a wasteful expenditure. However, with the development of technology and the corporations, the role of employees has also undergone tremendous changes. Highly competitive business environment and human capital-intensive corporation form force corporations to pay more attention to innovation capability (Edmans, 2011). At the same time, technological progress has also increased the demand for highly motivated and well-educated labors to meet the requirements of new technologies. Therefore, it is becoming more and more important to rely on a series of employee welfare policies, such as improving the working environment and enhancing employee treatment, to retain employees and stimulate their enthusiasm and creativity. As we all know, innovation is characterized by long-term and high risks (Holmstrom, 1989), which requires the long-term and stable participation of talented employees. The corporations can increase employee loyalty and productivity by improving employee benefits, such as generous salary, comfortable and safe working environment, good employee care and protection, and attractive retirement protection (Bloom et al., 2011), so as to retain talents for the corporation and attract excellent employees to join (Chen et al., 2016a). At the same time, employees who have solved their worries can increase their risk tolerance and be more willing to improve efficiency (Tian and Wang, 2011; Chen et al., 2016b). Therefore, employee welfare may enhance corporate innovation by improving the inventor efficiency.

Innovation requires not only the long-term investment of corporates and the active participation of employees, but also a good external ecological environment. The attention and active publicity of news media will also have a significant impact on the innovation investment of corporates. Corporates with good employee welfare often enjoy good social reputation, which can attract more and better talents to join in and promote innovation efficiency. At the same time, they can also get more positive reports from the media (Ben-Nasr and Ghouma, 2018), creating a relaxed and harmonious external environment for corporates, leading to the improvement of corporates innovation level.

#### Gaps in the CW enforcement reduce innovation.

Kevin Caves & Hal Singer 18. \*Director of Econ One. \*Managing Director of Econ One and an Adjunct Professor at the McDonough School of Business at Georgetown University. "WHEN THE ECONOMETRICIAN SHRUGGED: IDENTIFYING AND PLUGGING GAPS IN THE CONSUMER-WELFARE STANDARD" George Mason Law Review. Fall 2018. https://heinonline-org.proxy.library.emory.edu/HOL/Page?handle=hein.journals/gmlr26&div=16&id=&page=&collection=journals

Michael Luca and Timothy Wu show how a vertically integrated platform can decrease an edge rival's usage, a potential proxy for harm to edge innovation. 29 In a paper funded by Yelp and coauthored with Yelp's data scientists, the authors demonstrated that Google deviated from its organic search results to favor its own local web properties in a search for caf6s in Louisville." The European Union has advanced a similar theory, accusing Google in 2015 of diverting traffic from competitive rivals toward its own comparison-shopping site.' When Google was induced to revert back to its organic search results, the rankings of competing independent properties were elevated in Google's search, and users were 40% more likely to engage with the search results, as measured by click activity.3 2 To the extent that fewer clicks means fewer matches between buyers and sellers on the internet, and fewer consummated transactions, Google's favoritism of its own local web properties is consistent with an output reduction. And antitrust generally condemns conduct of a firm with market power that restricts output or leads to higher prices without any efficiency justification.

Another piece of evidence linking platform power to innovation comes via a study of the mobile app market by Professors Wen Wen and Feng Zhu.3 3 The authors find that after Google's entry threat into a specific app space increases, developers susceptible to Google's entry threat reduce innovation (as measured by software updates) and raise the prices for the affected apps.3 4 The authors measure both the innovation effects and price effects relative to apps in the same category that are unaffected by Google's entry threat.15 After Google's entry, software updates are further reduced, and prices further increased.36 Specifically, prior to Google's entry, the "affected developer reduces his updates on an affected app by 5 percent" and "increase[s] the prices of affected apps by 1.8 percent when the entry threat increases."" Once Google enters, the affected developer "reduces updates on the affected app by 8 percent" and "increase[s] the prices of affected apps ... by 3.6 percent," consistent with entry accommodation. 38

The authors conclude that, when app developers are "threatened by the platform owner, they do not stop investing and innovating; rather, they shift innovation effort from affected markets to unaffected markets."39 They further conclude that "Google's entry threats and actual entry [can] discourage further investment in developing duplicative features [yet] encourage app developers to introduce more new apps in other markets" by creating incentives to design around the platform owner. 40 The study therefore illustrates the potential for the CW standard's focus on price effects to generate false positives: seizing on higher app prices might miss the potential for increases in innovation and variety. Even the short-run price effects that the authors observe may be endogenous, assuming that Google's entry is a signal for app quality and that app prices are correlated with their quality. Their findings also highlight the potential for the CW standard, through its focus on output effects, to generate false negatives:

if independents are merely displaced into new app spaces by discriminatory treatment such that total short-run output is unfazed, intervention is unwarranted under the CW standard even though a platform provider has altered the trajectory of innovation, potentially dampening the incentives for future edge innovation. Traditional antitrust enforcement, at least under the CW standard, could not do this balancing; Congress would need to make a balancing decision and set the rules.

#### Monopsony power doesn’t benefit the economy.

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

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

#### Inequality reduces growth.

OECD 18. “HOW CAN COMPETITION CONTRIBUTE TO FAIRER SOCIETIES?” Organisation for Economic Cooperation and Development. 11-29-18. https://one.oecd.org/document/DAF/COMP/GF(2018)13/en/pdf

35. Growing **inequality reduces economic growth**. Financial hardship and credit market imperfections combine to **reduce people's ability to invest** in education and training, to change jobs, to learn new skills or start new businesses. Inequality harms the morale and the work effort of those who are left behind. It also leads to an **inefficient provision of public goods** that benefit the non-wealthy, like transportation and education even if they would foster overall economic growth. Growing inequality tilts public policy to favour the interests of the wealthy, which potentially creates a **vicious public policy cycle that could perpetuate inequality** and market power and threaten democracy. Inequality undermines the legitimacy of the social order, it lessens the sense that everyone has a fair opportunity and an equal voice, and finally many people would say inequality is objectionable morally. Put in utility terms, the marginal dollar may be more valuable socially if it is given to a struggling family to spend than to a wealthy one. There is a wealth transfer from the victims of market power to the firms exercising it. There are allocative efficiency losses and there is wasteful rent seeking as firms invest to create, obtain or preserve market power. Within the markets that are affected by market power, **innovation and productivity improvements slow.**

#### No econ decline impact.

**Walt 20** [Stephen M. Walt is the Robert and Renée Belfer professor of international relations at Harvard University. “Will a Global Depression Trigger Another World War?”, May 13th, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

**[MARKED]**

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### 2AC---budget da

#### no link---plan is popular.

Brishen Rogers 18. An Associate Professor at Temple University's Beasley School of Law, and a Fellow at the Roosevelt Institute. “The Limits of Antitrust Enforcement” Boston Review. 04-30-18. http://bostonreview.net/class-inequality/brishen-rogers-limits-antitrust-enforcement

**Left and right seem to be converging** here. **Progressives** are concerned that corporate power **threatens equality**, **conservatives** are concerned that it **threatens individual liberty**, and both are concerned that it threatens innovation. A **populist critique** of corporate power run amok may also **be good politics**. Political culture in the United States has never abandoned the Jeffersonian ideal of the yeoman farmer or independent artisan, nor has it abandoned its characteristic distrust of major institutions. There is now a Congressional Antitrust Caucus, and numerous foundations are sponsoring research into the causes and consequence of market concentration. This is all part of a renewed and **essential focus on structural inequality** and generally for the good.

#### won’t pass---healthcare fights

Heather Caygle, 9-8-2021, "Democrats reopen old health care wounds with $3.5T mega-bill on the line," POLITICO, https://www.politico.com/news/2021/09/08/democrats-medicare-spending-510456

Hours after House Democrats launched a major, health care-focused piece of their pitch to turn $3.5 trillion of social spending dreams into law, it ran smack into a political brick wall.

The party's growing problem is twofold: On one hand, the White House and Senate are keeping their distance from the House's proposal to divvy up hundreds of billions of dollars between a progressive push for a massive expansion of Medicare benefits and a leadership-driven quest to permanently strengthen Obamacare. On the other, progressives who got a lot of what they wanted in draft legislation the House Ways and Means Committee released Tuesday night are still unhappy with colleagues who would rather use the party's health care dollars on making expanded subsidies for Affordable Care Act coverage permanent.

The speed with which Democrats' health care drama leaked from behind closed doors underscores just how bumpy the ride will be as they attempt, in just a few weeks, to muscle through the most expansive shakeup of the social safety net in decades.

Democrats on the Ways and Means Committee are set to begin considering a huge chunk of their party-line bill on Thursday, yet are already privately predicting they'll end up getting strong-armed by the White House and Senate into taking the Medicare expansion championed by Sen. Bernie Sanders at the expense of the ACA.

And the angst on the left is more complicated than the typical progressives-versus-moderates dynamic — it's the latest chapter in a long-running debate between those who want to focus on shoring up Obamacare and those who want to move toward a "Medicare for All"-style model. As both factions battle, the bulk of President Joe Biden's domestic agenda is hanging in the balance.

“I’m not going to be quietly sitting on the sidelines and watching all the people eligible for Medicare treated royally and the people who depend on Medicaid be neglected,” House Majority Whip Jim Clyburn (D-S.C.) said, noting he’s made Biden aware of his preference for solidifying an Obamacare Medicaid expansion aimed at low-income Americans, including minority communities in red states like his. “I’ll stand up to anybody with that position. I don’t care who it is.”

On its surface, the health care clash pits Sanders, the Senate Budget Committee chair, against House Speaker Nancy Pelosi and her leadership team, who are leading the charge to shore up the Affordable Care Act. Yet its roots go deeper: Senate Majority Leader Chuck Schumer, who never signed onto Sanders' Medicare for All bill, is in his corner for the current clash as the upper chamber digs in to defend its approach to the multitrillion-dollar social spending bill. Schumer touted a "robust and historic expansion of Medicare" to reporters on Wednesday morning.

While Pelosi and her allies also support the Medicare benefits — a senior Democratic aide noted that they’ve been part of the speaker’s drug bill for years — they and several outside advocacy groups are pushing the party to prioritize the populations most vulnerable to prospective GOP rollbacks of the health law.

On Wednesday, Pelosi publicly downplayed the battle, saying "both will be present; that’s not a problem." But behind the scenes, the House leadership camp argues that taking away benefits from seniors on Medicare would be more politically difficult for a future Republican Congress.

Meanwhile, the House progressive camp wants to spend significant money on expanding Medicare to cover vision, hearing and dental benefits for seniors. But despite the massive size of Democrats’ bill, there’s not enough money in their pot to please everyone. Even the ambitious draft plan released by Ways and Means Chair Richard Neal (D-Mass.) Tuesday night, which a source close to the negotiations warned had not received White House or Senate buy-in, caused agita on the left.

#### Compromises mean their impact may be eliminated, underfunded to ineffectiveness, or delayed for years

David Dayen, 9-14-2021, executive editor, "Infrastructure Summer: The Sophie’s Choice of the Reconciliation Bill," American Prospect, https://prospect.org/infrastructure/building-back-america/infrastructure-summer-sophies-choice-of-the-reconciliation-bill/

THIS HOBSON’S CHOICE, figuring out whether to live with less on every policy in the Build Back Better Act, or to jettison some and make sure the policies remaining actually work and are politically potent, is agonizing for advocates and members of Congress. In a better world, this choice wouldn’t exist; the policies reflect critical human needs, and deciding to punt on them yet again should be unacceptable. But the axis of Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) has decided that they must have a cap on both spending and revenues, which is forcing these difficult conversations.

Adding to the frustration is the sheer number of policies in the legislation. When you put all your priorities as a party into one bill, you draw in every member who’s been fighting for one part or another for years. But when the overall toplines get cut, nobody wants to take out their pet project. The only other option is to cut everything across the board, which can lead to a slew of ineffective half measures.

We’re seeing this play out in several ways. Some programs, like HCBS, are just being cut. Others, like the dental benefit in Medicare, are being delayed for several years. This makes it look cheaper within the ten-year budget window.

#### Debt ceiling thumps

BURGESS EVERETT and HEATHER CAYGLE, 9-12-2021, "Dems hurtle toward a new fiscal cliff," POLITICO, https://www.politico.com/news/2021/09/12/dems-toil-to-avoid-default-shutdown-in-pivotal-fall-511158

Democrats’ internal wrangling over a massive new social spending plan will soon be eclipsed by much more urgent problems: avoiding an economic collapse and a government shutdown.

There is growing worry among some rank-and-file Democrats that their tunnel-vision mentality on a $3.5 trillion budget reconciliation bill could provoke economic blowback if Republicans hold the line and tank efforts to lift the debt ceiling. And Democrats' threadbare majorities in Congress are leaving the party with little time to wriggle out of a dangerous economic morass that could overwhelm their other priorities, from voting rights to tax increases on the wealthy to a sweeping expansion of the social safety net.

#### Nothing will pass, tons of thumpers, and Biden’s PC is sapped

Anita Kumar and Christopher Cadelago, 9-7-2021, Senior Editor, Standards & Ethics for POLITICO; White House correspondent. "Abortion fight adds to Biden’s growing policy backlog," POLITICO, <https://www.politico.com/news/2021/09/07/abortion-fight-biden-policy-510003>

Biden and his fellow Democrats are currently trying to come up with a $ 3.5 trillion reconciliation program that would fund paid time off, child care and education, as well as climate change initiatives. They are also pushing a $1 trillion bipartisan infrastructure bill to fix crumbling roads, bridges and sewers. The hope is that if Democrats push through these reforms, they can build momentum for other agenda items and the midterms beyond.

“When you look at what has been accomplished so far and what is almost inevitably going to happen in reconciliation, it’s a huge accomplishment,” said Democratic strategist Adrienne Elrod, who worked on Biden’s campaign. “Once we get past reconciliation, then I think some of the other top priorities that the president has consistently talked about from the election campaign until now… will come to the fore.”

But whatever momentum there was for reconciliation and infrastructure bills, it has been dashed in recent weeks. Biden faces the lowest approval ratings of his presidency so far, following the botched troop withdrawal from Afghanistan. The calendar also plays against the party. Congress is already engrossed in passing Biden’s two main spending bills and will soon have to grapple with efforts to maintain government funding and increase the federal borrowing limit. And by the end of the year, members of Congress will turn their attention to the campaign – first the midterms, then the next presidential race.

With the closing of legislative windows, the angst in many corners of the progressive ecosystem has grown stronger.

#### non compete XO thumps

Lisa Nagele-Piazza 7/14. Senior Legal Editor at SHRM Online. “What Does President Biden's Order on Noncompetes Mean for Employers?” 7/14/21. https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/what-biden-order-on-noncompetes-means-for-employers.aspx

Employers should review their noncompete agreements and other restrictive covenants in light of a new executive order that aims to curb the use of these contracts in the workplace. The federal government has yet to issue any new rules, but employers should prepare for potential changes.

President Joe Biden recently signed an executive order that encourages the Federal Trade Commission (FTC) to ban or limit noncompete agreements. The order is meant to promote competition and economic growth by making it easier for workers to change jobs, among other objectives.

Employers generally use noncompetes to protect their proprietary information by preventing employees from working for competitors in a specific geographic area for a limited amount of time. But such agreements, particularly with low-wage earners in the retail and restaurant industries, have been scrutinized in recent years.

Carson Sullivan, an attorney with Paul Hastings in Washington, D.C., said there's a lot of debate about what the executive order means for noncompetes. "We really can't tell how broad the ban will be," she said, though she noted that the order focused on "unfair" use of noncompetes and other agreements that limit employee mobility.

## 1AR

### 1AR---inequality adv

### 1AR---democracy adv

### 1AR---expand pic

#### regs can’t solve future problems.

Jon Sallet 18. Partner at Steptoe. Previously, he was General Counsel of the Federal Communications Commission and Deputy Assistant Attorney General at the Antitrust Division. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century”. https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf

One, we will look at incipiency, actions that have not had the kind of competitive effect that he thought the Sherman Act examined. Secondly, because, he said, there will be new kinds of harm that we cannot anticipate. If we write a detailed list, we are going to miss some. So he wanted a standard that would evolve as economic issues as the facts evolved.

### 1AR---econ da

#### Consumers are still considered, just secondary to workers.

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

Monopsony continues to **challenge antitrust law** despite Weyerhauser. Given that anticompetitive agreements among employers benefit one group of consumers (customers) while hurting another consumer group (workers), antitrust law forces courts to weigh the interests of these two groups of consumers against one another. Weighing the interests of two groups of consumers is complex and requires courts to choose whose economic welfare matters more. Currently, courts are **improperly allowing monopsonists to engage in anticompetitive conduct** merely because it results in lower prices.167 Currently, courts directly weigh the welfare of both customers and workers against each other. Because antitrust law traditionally focuses on customers and anticompetitive conduct in labor markets causes lower prices, direct comparison of the welfare is insufficient. Extending the antitrust history of partial equilibrium analysis, I propose that courts consider the welfare of workers first, then **customers’ welfare only if workers experience a de minimis harm**. This proposal **appropriately weighs the interests of workers against customers** who receive a price cut from monopsonistic conduct. Further, this proposal **sits well with antitrust law’s long history** of providing different treatment to anticompetitive conduct in labor. This rule does not solve every problem that a mirror treatment of monopoly and monopsony creates. Yet, this solution both operates within the established Weyerhauser framework to apply current antitrust standards in new ways and pursues antitrust law’s goal of protecting competitive markets.

#### Their link is about supplanting an economic standard in antitrust

1NC Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

The adoption of the consumer welfare standard was an enormous improvement over what came before it. Yet no one would assert that every aspect of antitrust policy in furtherance of the consumer welfare standard is perfect and should remain unchanged. There will always be grounds for critique and improvement of specific policy decisions and processes. But none of these arguments undercuts the basic merits of the standard and its supremacy over alternatives.

Antitrust enforcers and courts have a difficult time as it is ensuring that their decisions actually benefit consumers. As Robert Pitofsky once said, “antitrust enforcement along economic lines al-ready incorporates large doses of hunch, faith, and intuition.”40 But the existence of imperfections does not justify intervention that would move us further away from economic objectives. Indeed, such intervention would more than likely make the imperfections worse.

When antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions, as Herbert Hovenkamp highlighted in a recent paper:

As a movement, antitrust often succeeds at capturing political attention and engaging at least some voters, but it fails at making effective or even coherent policy. The result is goals that are unmeasurable and fundamentally inconsistent, although with their contra-dictions rarely exposed. Among the most problematic contradictions is the one between small business protection and consumer welfare. In a nutshell, consumers benefit from low prices, high output and high quality and variety of products and services. But when a firm or a technology is able to offer these things they invariably injure rivals, typically those who are smaller or heavily invested in older technologies. Although movement antitrust rhetoric is often opaque about specifics, its general effect is invariably to encourage higher prices or reduced output or innovation, mainly for the protection of small business or those whose technology or other investments have become obsolete.41

Even with careful economic analysis, it will not always be clear how to resolve the inevitable tensions between consumer welfare and other policy preferences. In 1978, then-FTC-Chairman Michael Pertschuk laid out his vision for a “new competition policy” at the FTC. In it, he asserted that anti-trust policy must consider

the social and environmental harms produced as unwelcome by-products of the market-place: resource depletion, energy waste, environmental contamination, worker alienation, the psychological and social consequences of market-stimulated demands.”42

It is not clear what it would mean to take account of these things in the context of anything approaching a rigorous policy framework. But even more troublingly, many, if not all of them call for a rejection of the core, competition-focused objective of antitrust.

For instance, Jonathan Adler has described the collision between antitrust and environmental protection in cases where, precisely because of reduced output, collusion might lead to better environ-mental outcomes, such as improved conservation of wild fish and other common pool resources.43 How would a court or enforcer conceivably evaluate that trade-off? It is difficult enough to evaluate the procompetitive justifications for certain conduct already — including in somewhat similar circumstances where intrabrand price or distribution constraints, for example, may be aimed at pre-serving the “common pool resource” of brand value or consumer goodwill. But that difficulty is only magnified where the trade-off is between incommensurate benefits, distributed over entirely different populations, and without any operational connection between them within the firm undertaking the conduct in question.

Whatever benefits might conceivably come from giving weight to non-economic values, even just at the margin, they would inevitably come at the expense of the core, competitive values of modern antitrust. As Ernest Gellhorn noted in his masterful critique of Pertschuk’s “socially conscious” vision for the FTC:

#### That’s not the plan---finishing…

Eugene K. 1AC Kim 20. J.D. 2020; Yale College, B.A. 2016. “Labor’s Antitrust Problem: A Case for Worker Welfare” The Yale Law Journal. 2020. https://www.yalelawjournal.org/pdf/130.2Kim\_q1s8bt8t.pdf

Just as consumer welfare can be measured through economic factors like price, output, quality, and innovation, **courts and economic experts can assess worker welfare through a set of analogous factors:** wages and benefits, hours, working conditions,65 and training. One major tension between these two standards is that workers benefit from higher wages while consumers benefit from lower prices, but these factors capture **similar characteristics of equilibria in both markets**.66 Wages and hours are the labor-market analogs of price and quantity, and benefits can be considered along with wages as a type of compensation. **Working conditions reflect heterogeneity within a single type of employment**, just as quality reflects heterogeneity within a single type of product. And training reflects how labor markets can be dynamic, just as innovation reflects how product markets can be dynamic: that is, labor productivity can improve over time, just as firm productivity can improve over time. As in product-market analysis, courts and economic experts can assess how a contested activity

**[1AC stopped here]**

(e.g., a merger) **affects these factors and estimate the net effect on worker welfare.** A worker welfare standard would be similar to a consumer welfare standard in that much of its application would fall on economic experts, whose work would be assessed and weighed by courts. Of course, some cases will be clearer and may be amenable to per se analysis, like an agreement between firms to fix wages. But, as in product markets, other cases will be subtle, and economics will have a role to play. **Just as economic models are used to forecast** the effects of certain market events on price and quantity, and aggregate those effects to estimate net effects on consumer welfare,67 economics will also be instrumental in forecasting the effects of market events on wages and hours, and aggregating those effects to estimate net effects on worker welfare. Antitrust analysis is highly technical in the status quo,68 and **a worker welfare standard would not be any different in its reliance on economics**. The main difference is that a worker welfare standard **focuses attention on the interests of workers, who are often neglected** despite their vulnerability to rent-extractive firm behavior, and recognizes that advancing the interests of workers may **require more than advancing the interests of consumers.**

#### Growth alone can’t solve inequality---protections for workers are key.

Orsetta Causa 17. \*Senior economist, Ireland/Portugal desk, Organization for Economic Cooperation and Development (OECD). \*Mikkel Hermansen, economist, Bulgaria/Denmark desk, OECD. \*Nicolas Ruiz, senior economist, Estonia/Poland desk, OECD. "Does growth lead to inequality? It depends." OECD. 1-10-2017. https://oecdecoscope.blog/2017/01/10/does-growth-lead-to-inequality-it-depends/

Using a novel empirical framework, Hermansen et al. (2016) shed new light on the old growth and inequality nexus by assessing the impact of growth on household incomes across the distribution, that is, progressively encompassing poor, middle class and rich households. Their conclusion is that that there is no single answer to the growth and inequality question. Labour productivity growth is found to have contributed to rising market income inequality, while this was partly mitigated through government redistribution, on average across OECD countries over the past three decades (Chart 1, Panel A). By contrast, employment growth is found to have had an equalising impact, benefiting mostly and importantly households in the lower part of the income distribution (Chart 1, Panel B). Overall, these two forces have tended to offset each other and resulted in a broadly distribution-neutral impact of GDP per capita growth, on average across OECD countries over the last three decades. So, with reducing inequality remaining a defining challenge of the post-crisis era, promoting job creation is a key policy goal, in particular where employment rates still fall short of pre-crisis levels. But, perhaps more importantly, in looking for ways to revive productivity growth, governments need comprehensive policy strategies to ensure that the gains are more broadly shared across the population.

#### monopsony power reduces productivity, skilled labor, and investment

C. Scott Hemphill & Nancy L. Rose 18. \*C. Scott Hemphill is Professor of Law at New York University School of Law. \*Nancy L. Rose is the Charles P. Kindleberger Professor of Applied Economics at the Massachusetts Institute of Technology. “Mergers that Harm Sellers” The Yale Law Journal. 2018. <http://economics.mit.edu/files/17752>

Now **consider monopsony**. The firm has market power in an input market, such as the labor it hires to make a product. The firm recognizes that its decisions affect the purchase price of the input. If the firm reduces the price it pays, the quantity available for purchase falls, but not to zero. In the labor context, workers with a low enough reservation wage still accept a job offer; workers with a higher reservation wage drop out. By reducing its wage offer, the firm pays a lower wage for all employees, which can raise its overall profits. Part of the workers’ loss takes the form of wages transferred to the firm as extra profit. Additional **deadweight loss arises** as workers whose greatest productivity is working for the firm are instead pushed to less productive employment or **out of the labor market entirely**.11 The exercise of monopsony power in hiring skilled labor, such as nurses, may **lead to further economic losses over time**, as some workers choose not to invest in skill acquisition **due to the lower wage rate**.12 When the inputs are produced by upstream firms, such as farmers raising beef cattle to be sold to meat processing companies, the further dynamic costs of monopsony may include **reductions in investment** by upstream firms in capacity, innovation, product quality, or other important input attributes.13 While dynamic effects such as these will depend on the particular facts and circumstances of a given market, and likely are difficult to quantify empirically, innovation costs of reduced competition among buyers have the potential to dwarf static or short- run costs.14

#### antitrust is key

Ioana Marinescu & Eric A. Posner 18. \*Marinescu is Assistant Professor, School of Social Policy & Practice, University of Pennsylvania, and a faculty research fellow at the National Bureau of Economic Research. \*Posner is Kirkland & Ellis Distinguished Service Professor, University of Chicago. “WHY HAS ANTITRUST LAW FAILED WORKERS?” 12-21-18. <https://www.cornelllawreview.org/wp-content/uploads/2020/09/Marinescu-Posner-final.pdf>

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

#### It increases productivity.

Yu Wei et al. 20. School of Finance, Yunnan University of Finance and Economics, Kunming, China. \*Haoxi Nan School of Economics and Management, Southwest Jiaotong University, Chengdu, China. \*Guiwu Wei School of Business, Sichuan Normal University, Chengdu, China. "The impact of employee welfare on innovation performance: Evidence from China's manufacturing corporations." Science Direct. October 2020. https://www.sciencedirect.com/science/article/pii/S0925527320301389

According to incentive theory, providing employees with better welfare can motivate them to work hard and ultimately create higher corporate value. In modern management theories, employees are considered strategic asset that can provide additional value to the corporation, particularly in knowledge-based industries, such as manufacturing and pharmaceutical corporations. According to these theories, employee welfare is particularly crucial to drive employee engagement which ultimately translates into higher performance and enhanced shareholders’ values. Consistent with this view, Levine (1992) and Wadhwani and Wall (1991) find that high levels of wages lead to enhanced productivity. Moreover, Perry-Smith and Blum (2000) document that family-friendly policies within corporations lead to increasing market share, and larger corporate profits. More recently, Edmans (2011) utilizes a value-weighted portfolio of the “100 Best Corporations to Work for in America” to investigate the relationship between employee satisfaction and long-run stock returns. The results show that this portfolio earned an annual four-factor alpha of 2.1% above industry benchmarks during the period from 1984 to 2009. The author concludes that corporations with high levels of employee satisfaction generate superior long-term stock returns. The author attributes these findings to the failure of the stock markets to incorporate intangible assets (such as employee well-being) fully into stock valuations. Affected by incentive theory, some corporations strive to provide welfare for their employees in all aspects, making them satisfied and happy, as happy employees are often more efficient than unhappy employees (Oswald et al., 2015). Increasing remuneration (Mas, 2006) can increase employees’ enthusiasm for work and create higher corporate value. Other corporations enhance their value creation, profitability and productivity by providing employees with more comfortable working environment (Faleye and Trahan, 2011). Negative incentives, such as layoffs and pay cuts, dampen employee enthusiasm and lead to low productivity and a loss of corporate value (Ghaly et al., 2015).

#### CW fails to protect innovation.

Kevin Caves & Hal Singer 18. \*Director of Econ One. \*Managing Director of Econ One and an Adjunct Professor at the McDonough School of Business at Georgetown University. "WHEN THE ECONOMETRICIAN SHRUGGED: IDENTIFYING AND PLUGGING GAPS IN THE CONSUMER-WELFARE STANDARD" George Mason Law Review. Fall 2018. https://heinonline-org.proxy.library.emory.edu/HOL/Page?handle=hein.journals/gmlr26&div=16&id=&page=&collection=journals

Given Microsoft's prominence in the defense of the CW standard, it is worth quickly revisiting Microsoft on this question: plaintiffs burden for demonstrating anticompetitive effects in a single-firm-conduct case involving a platform monopolist. The D.C. Circuit ruled that "in a case brought by the Government, it must demonstrate that the monopolist's conduct harmed competition, not just a competitor." 0 Summarizing its rationale for why Microsoft's license restrictions with original equipment manufacturers ("OEMs") were deemed anticompetitive, the court noted that "Microsoft reduced rival browsers' usage share not by improving its own product but, rather, by preventing OEMs from taking actions that could increase rivals' share of usage."' The court similarly found Microsoft's integration of its browser and its operating system to be anticompetitive, because "the commingling [of browsing and nonbrowsing code] deters OEMs from preinstalling rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals' APIs [application programming interfaces] as an alternative to the API set exposed by Microsoft's operating system." 5 2 Even after it expressly stated that harm to "just a competitor" was not sufficient, the court treated evidence of rival browsers' usage (or market) share as a proxy for harm to competition.5 1 Importantly, the court did not require evidence of any price or output effect.5 4 And, on the question of innovation harms, the court seemed more concerned about innovation from Microsoft's perspective-that is, an innovation harm in the platform market from regulation, and not in the edge or app markets." The government won on claims where Microsoft had no efficiency justification; wherever Microsoft offered a justification, on the other hand, the court performed no actual weighing of the harms and benefits and instead deferred to Microsoft.5 6 This failure to weigh suggests that the courts and the CW standard are ill equipped to address the issue of innovation harms.