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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---modeling

#### 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

#### Thus, the 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 (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---adv---inequality

### 2AC---adv---modeling

### 2AC---adv---democracy

### 2AC---T-scope

#### c/i---“Expand the scope of antitrust” includes axing consumer welfare.

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

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

#### The scope is what antitrust law deals with.

Macmillan dictionary. "SCOPE (noun) American English definition and synonyms". https://www.macmillandictionary.com/us/dictionary/american/scope\_1

DEFINITIONS2

1the things that a particular activity, organization, subject, etc. deals with

in scope: The new law is limited in scope.

beyond/outside the scope of someone/something: These issues are beyond the scope of this book.

within the scope of someone/something: Responsibility for office services is not within the scope of the department.

### 2AC---states cp

#### 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.

#### The DOJ and FTC undermine states.

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

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

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

#### FTC is key to modelling.

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

#### No blackouts.

Larson 18 Selena Larson, Cyber threat intelligence analyst at Dragos, Inc. [Threats to Electric Grid are Real; Widespread Blackouts are Not, 8-6-2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/]

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

### 2AC---memorandum cp

#### Delegating antitrust wrecks SOP

Rebecca Haw, 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." *Texas Law Review*, vol. 89, no. 6 (2011): 1247-1292. HeinOnline.

C. Objections

Giving an agency authority to interpret the Sherman Act in the first instance raises several concerns. First, if Congress were to give an agency the final word on how to implement the vague incantations against monopolization found in the Sherman Act, it might violate the nondelegation doctrine.264 For an agency's norm-creation power to have any meaning, it would have to include the ability to override past precedent interpreting the Act. A century's worth of jurisprudence on competition policy could be scratched and replaced by any set of rules that purport to invalidate any "combination . . . in restraint of trade,"26 5 which, by its plain meaning, could preclude partnership agreements and pedestrian mergers. Of course, if giving an agency this power violates the nondelegation doctrine, then so does giving the courts this power; the nondelegation doctrine does not only limit delegation by Congress to agencies, but it also limits delegation to courts.266 So technically it would be incoherent to say that the delegation of power to an agency violates the nondelegation doctrine while delegation without saying the current state of affairs is unconstitutional. But Congress's delegation of power to the Court in the form of the Sherman Act is so entrenched, and the Court is now so limited by the stare decisis effect of its own decisions, that the delegation is not likely to be seen as controversial. In contrast, advocates of separation of powers might be understandably nervous about redelegating power of competition policy writ large to an agency today writing on a blank slate. The transfer of power may need to be more piecemeal than that. Instead of amending the Sherman Act to confer broad interpretive authority to the FTC, Congress could pass statutes on individual competition law controversies-like tying, resale price maintenance, and refusals to dealgiving the FTC more guidance about how to prioritize rulemaking. These statutes would be designed to supersede the Sherman Act; they would displace the Court's interpretation of the Sherman Act as it related to the particular practices, while leaving in place less controversial Supreme Court rules under the Act, such as the prohibition on naked price fixing. Or Congress could achieve this same effect by amending the Sherman Act to be more precise in its economic aims.

### 2AC---solicitor general cp

#### Congress is key.

Bill Baer et al 20. Visiting fellow in governance studies at The Brookings Institution, previously served as the assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice and in a variety of roles at the Federal Trade Commission, including director of the Bureau of Competition. “Restoring competition in the United States” Washington Center for Equitable Growth. 11-19-20. <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/?longform=true>

Substantive antitrust reforms Over the past 40 years, the **federal courts** have increasingly advanced a **skeptical and cramped view of the antitrust laws.** They often rely on economic assumptions that, at best, are **no longer valid** and, at worst, **never were**.10 As a result, the courts **increasingly saddle plaintiffs with inappropriate burdens**, making it unnecessarily difficult to prove meritorious cases and allowing anticompetitive conduct to escape condemnation.11 In two recent merger cases, for example, courts expressed doubt that a company would use its enhanced market power to increase its profits.12 **Courts too often reject the best, direct evidence of anticompetitive harm**, and instead require an elaborate analysis of indirect evidence of market definition, market share, and market power.13 In the recent Federal Trade Commission v. Qualcomm Inc. case, the U.S. Court of Appeals for the Ninth Circuit even concluded, bizarrely, that harm to customers is not a relevant anticompetitive harm.14 Together, **flawed legal precedent and erroneous economic reasoning** create a daunting hurdle to effective antitrust enforcement. The resulting harm goes far beyond the effects in individual cases. None of this is what Congress intended when it passed the Sherman Antitrust Act of 1890 and subsequent antitrust laws over the course of the 20th century. Without **further legislative direction**, the courts are almost certain to continue to narrow antitrust protections. **Market power will increase**. More consumers and companies will buy goods and services from dominant firms. More small business and workers will sell to, or work for, firms with monopsony power. **Less innovation will occur.** And the negative byproducts of market power—**increased inequality**, less diversity of voices, and increased concentration of political power—**will worsen.** Without **significant legislative reform**, more vigorous antitrust enforcement likely will have only a **modest impact on market power.** Although effective litigation strategies can limit or overturn bad legal precedents or develop new ones, **that process is painfully slow.** It can take years to achieve even a single success. And given the **current perspective of the federal courts**, there is no guarantee that aggressive litigation strategies will be successful. Congress need not passively accept today’s cramped interpretation of the antitrust laws. It should once again reassert its commitment to competition by updating our antitrust laws and **directing the courts to better protect competition,** consumers, and workers. Legislation allows Congress to make broad policy judgments about what the antitrust laws should prohibit and the **best legal rules for achieving those results.**

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

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

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

### 2AC---infrastructure da

#### no way it passes

Joe Cancha, 9/15 <https://thehill.com/opinion/white-house/572176-if-35-trillion-infrastructure-bill-fails-its-bye-bye-for-an-increasingly> (just cut it sorry for the cite)

If offered up as a standalone package, the $1.2 trillion actual-infrastructure bill probably would pass easily in the Senate, with relatively robust Republican support from party moderates. And Americans certainly see the money as well spent in this regard, garnering 68 percent support, per Gallup.

A NoLabels.org poll tells a similar story, but with this twist: "A supermajority (72 percent) of voters is for the bipartisan infrastructure plan. [But] 76 percent don’t want its passage linked in any way to the separate social spending plan."

On cue, Democrats, led by House Speaker Nancy Pelosi (D-Calif.) and Senate Majority Leader Chuck Schumer (D-N.Y.), have declared that the $1.2 trillion package negotiated between Democrats and Republicans will not see the light of day unless it is paired with the additional $2.5 trillion of "infrastructure," which includes things like national paid family and medical leave programs, free universal preschool and free community college for all students, as well as billions for clean energy programs, which were cut from the $1.2 trillion bipartisan infrastructure deal during negotiations.

Passing the $3.5 trillion plan just one month ago appeared to be a real possibility, but then the implosion of the Afghan government occurred in mid-August. The Taliban quickly gained control of Kabul, and the administration was caught with its pants down. Then 13 U.S. service members were killed by an ISIS-K suicide bomber, sparking national outrage, and the bottom dropped out altogether — along with the president's poll numbers over the poor execution of the drawdown.

The president's poll numbers looked solid just 10 weeks ago, with about 54 percent approval in the RealClearPolitics average. Those numbers have since cratered for all the reasons listed above, throwing Biden's domestic agenda into serious jeopardy as Democrats slowly move away from him.

To that end, the most powerful “Joe” in Washington these days isn't the president but Joe Manchin, the Democratic senator from West Virginia. He told several Sunday talk shows last week that he will not support the $3.5 trillion package and made a sober, sensible argument for his decision.

"We spent $5.4 trillion. And a lot of that really continues way into next year. We haven't dispersed it all," Manchin correctly explained to NBC's Chuck Todd.

“Only thing I've said, put a pause on," he added. "Shouldn't we basically put a pause on, with all the unknowns that we have right now we're facing? Don't know where COVID's going to go. Inflation is still very high and rampant. And then, on top of that, the geopolitical unrest that we have going on, we might be challenged there. Don't you think we ought to be prepared for that since we don't have the emergency that we had with the American Rescue Plan, when the president first came in and we passed (it)?”

Without Manchin, the bill is dead. And even if Manchin could somehow be turned, Sen. Kyrsten Sinema (D-Ariz.) is also a “no.” In a 50-50 Senate, all it takes is one defection.

#### 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.

#### Debt ceiling thumps

Victor Reklaitis, 9-11-2021, "Debt limit, social spending, infrastructure battles loom in ‘uniquely frenetic period’ for Congress," MarketWatch, https://www.marketwatch.com/story/debt-limit-social-spending-infrastructure-battles-loom-in-uniquely-frenetic-period-for-congress-11631045095

“The debt ceiling always gets raised, but this time will be nerve-wracking, amid threats of a government shut-down,” he added. “Can massive infrastructure bills win passage in this climate? A major haircut will be required, which could force angry House progressives to oppose infrastructure spending rather than accept pared-back bills.”

#### 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.

#### Biden’s green infrastructure is *too weak* to solve warming and *increases emissions*

Aronoff, 21 (Kate Aronoff is a staff writer at The New Republic, She is the co-author of A Planet To Win: Why We Need A Green New Deal, a fellow at the Type Media Center and a contributing writer to the Intercept, January 26 2021 “The Fossil Fuel Industry Thinks It Will Have a Good Year Under Biden” The New Republic, <https://newrepublic.com/article/161048/fossil-fuel-oil-biden-stimulus>) MULCH

But the business press and industry analysts have presented a rather different story. Oilfield services companies are cautiously optimistic, after a rash of bankruptcies last year. The combined prospects of an economic stimulus and infrastructure package—both of which will boost fossil fuel demand—spell a more prosperous 2021 and 2022 for the world’s biggest polluters. Even Biden’s aspirations to “Build Back Better” with green jobs, Oslo-based energy consultancy Rystad Energy predicted last week, may well be welcome news to oil and gas producers. “Any ‘green’ focus of the infrastructure bill,” a company press release read, “will be mostly additive to overall short-term oil products demand due to construction activity, with risks mostly limited to medium-term oil demand, depending on the scope and success of the projects.” Stimulus measures, in other words, will increase energy demand in general. At least for now, that means more demand for fossil fuels. They call it the “Biden boost,” predicting an extra 350,000 barrels per day (bpd) for 2021 and 900,000 bpd for 2022, should he follow through on his promises. They do also note that new environmental rules, if carried out, could cause oil demand to start to fall toward the end of the 2020s. This may seem counterintuitive given Biden’s campaign promises. The mechanism isn’t complicated, though: There’s a stubborn link between growth in gross domestic product and greenhouse gas emissions. Even the greenest of recoveries is likely to boost both growth and emissions in the near term by putting people back to work and boosting consumer spending. Unless economic recovery policy includes sweeping, rapid changes to electrify and decarbonize the country and actively curtail fossil fuel production, even a stimulus that’s green on many other fronts could help emissions climb for years to come. Savvy U.S. polluters, of course, could still flourish even with new regulations. Federal lands—on which Biden has issued his two-month pause on new drilling leases and permits, allowing a select few Department of Interior officials to approve exceptions—are now home to just 14 percent of active land rigs. A recently released analysis by Morgan Stanley expects that large, diversified companies can simply reallocate all of their new drilling and planned investment to nonfederal land. While the bank predicts political pressure will put any permanent ban on leasing off the table, it projects tighter rules on everything from methane emissions to environmental reviews going forward. For many companies, that wouldn’t be a bad thing. “In effect,” Oil & Gas Journal writes of the bank’s findings, a Biden administration placing more climate-focused policy constraints on the industry “is constructive for the oil and gas macro—constraining supply and putting upward pressure on the marginal cost of shale production without impacting short-term demand.” Smaller firms that do a lot of business on federal land face big risks, of course. Yet larger and more integrated U.S. oil majors like Chevron are well insulated against even sweeping restrictions and “could benefit to the extent President Biden’s policies tighten the supply/demand balance for global oil & gas markets.”

#### Climate doesn’t cause extinction.

Kerr et al. 19 – Dr. Amber Kerr, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub. Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research. Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne. Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab. Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1. Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research. [Claim that human civilization could end in 30 years is speculative, not supported with evidence, 6-4-2019, https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/]

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050. However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation! A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately. Peter Kalmus, Data Scientist, Jet Propulsion Laboratory: This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive. Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive Richard Betts, Professor, Met Office Hadley Centre & University of Exeter: This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat” – they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave. North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half. Andrew King, Research fellow, University of Melbourne: Projections of extreme events such as these are very difficult to make and vary greatly between different climate models. Deadly heat conditions across West Africa persist for over 100 days a year Peter Kalmus, Data Scientist, Jet Propulsion Laboratory: The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1. It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error. 1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’. Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research: This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim). Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome? While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science. Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research: It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

#### 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.

#### Unity doesn’t matter- progressives fall in line inevitably, tons of thumpers prove

Alexander Sammon, 7-26-2021, staff writer. "How Joe Biden Defanged the Left," American Prospect, https://prospect.org/politics/how-joe-biden-defanged-the-left/

Criticism has been in surprisingly short supply during Biden’s first six months, from a left flank that’s been somewhere between docile and unctuous. D.C. progressive groups have lavished praise on Joe Biden as the next FDR, and when he’s indulged some un-FDR-like tendencies, they’ve continued lavishing. “The idea of Joe Biden being FDR 2.0 was just a message point without a body of work to back it up,” Murshed Zaheed, progressive political consultant and former political director of CREDO, told me. “They just desperately needed the folks who were fired up.”

The result has been a progressive flank that has been defanged in Bidenworld, unwilling to make public criticisms even as much of the legislative agenda has slipped away. Already, gun control, judicial reform, student debt relief, and much of health care and immigration reform have fallen by the wayside. Policing and criminal justice reform has bogged down in seemingly endless bipartisan negotiations, with Biden pushing no deadlines for action. Democrats have split on drug pricing, with moderates on the Hill chasing modest tweaks and progressives trying to go big to save hundreds of billions for additional fiscal spending. Tax reform, despite making it into the reconciliation bill, remains on the ropes. There’s no real plan to pass meaningful voting rights protection, which Biden admitted preemptive defeat on in a July speech. The PRO Act and some small percentage of immigration, like the $15 minimum wage before it, will be decided by the whims of the Senate parliamentarian. The president himself is one of the stronger remaining defenders of the filibuster. Yet the self-censorship and happy talk endure.

A DISEMPOWERED PROGRESSIVE FLANK during a Democratic administration is not a new phenomenon. One need look no further than President Biden’s former boss, President Obama, for precedent. Obama’s strategy to gag progressives relied on the asperity of his chief of staff, Rahm Emanuel, in a program former blogger Jane Hamsher once coined “the veal pen.” In a series of weekly meetings between progressive groups and administration officials called “Common Purpose,” Obama adviser Erik Smith, the White House comms team, and sometimes even Emanuel himself would impress upon progressive groups their duty not to criticize the White House’s priorities—on the bank bailouts, on health care—in the name of message discipline. This kept those groups in the veal pen, at risk of a cattle prod if they ventured out.

Occasionally, Emanuel would unleash his personal fury toward anyone even thinking of criticizing the Obama administration’s thoroughly unprogressive agenda, even though it directly contravened their own priorities. In one such meeting, Emanuel infamously called MoveOn “fucking retarded” for running radio ads against moderate Blue Dog Democrats who successfully downed progressive priorities in the health care package. Groups had to “earn their seat at that particular table by not bucking the White House,” as Hamsher wrote in 2009. Silence was the cost of access, and for at least a term and a half, it worked.

Progressives’ diminished standing in the Biden White House looks much different. While Emanuel would kill progressives with threats, Biden’s chief of staff, Ron Klain, has killed progressives with kindness, with even more access and personal discussions. For veteran D.C. progressives, that has made for more amity, but an unwillingness to criticize Klain, a perceived ally. “Everyone talks about how it’s so much better than before, how they have way more access under Biden,” said one White House adviser.

While leaders of progressive D.C. groups have found themselves at the table at various engagements, events, shared press stunts, dinners with the vice president and at the White House, with a warmer reception than they ever got under Obama, it has not gotten their hands on the reins of the Biden agenda as it veers off course from its campaign-trail commitments. That, combined with the inchoate nature of calling out a president who just weeks ago was hailed as their vision of the next FDR, has translated into a kind of self-censorship. Groups have become unwilling to pressure the president, and subsequently unable to wield power.

As Bidenworld whittled away at the family care components of the package, not a single major women’s rights group rallied its members in support of the critical issues of universal pre-K, home health care, and child care, or put out a call saying that they would not support a bill in which these elements were left out. When Bidenworld left the Domestic Workers Bill of Rights out of the American Families Plan, the National Domestic Workers Alliance instead cheered the domestic work parts of the proposal that did get in. Those pieces vanished from the bipartisan framework; some reappear in the detail-scant reconciliation bill despite very little public pressure exerted on the White House from the biggest groups that support it. In mid-July, care advocates announced a four-day interactive art exhibit on Capitol Hill, with an “art installation of miniature homes representing symbolic communities of care squads around the country,” and 3,000 care workers in attendance. It’s unclear whether tiny-home villages will make the care provisions sacred in the president’s eyes during negotiations.

Even as Biden has refused to lift a finger for H.R. 1, the voting rights bill that was a top priority of Public Citizen, the group has refused to strongly criticize him. Ditto MoveOn, which continues to blame “GOP obstruction,” despite Republicans being in the minority. No major progressive group has drawn a hard line on any legislative priority or whipped its members to call the White House in support. The result, of course, is that roughly one-quarter of the American Jobs Plan and all of the American Families Plan now reside in an uncertain limbo, waiting to reappear in a reconciliation package. “There’s no strategy on everything else,” said Zaheed.

In rare moments and on fairly niche issues, progressive groups have called out Biden publicly, and it’s worked. When news leaked that the president had chosen to go back on a campaign promise and would not raise the refugee limit from its Trump-era lows of 15,000 people per year, there was broad outcry from progressive and humanitarian groups. Biden quickly reversed course.

Still, fearful to cross Biden, progressive strategy has been reduced to training frustrations on Joe Manchin, who, critically, does not care what D.C. progressives say about him. And Manchin is likely soaking up enmity on behalf of a number of Democratic senators who are similarly opposed to more progressive ambitions, including Kyrsten Sinema, Jeanne Shaheen, Mark Warner, Maggie Hassan, and, most importantly, Chris Coons, who is seen as Biden’s right hand.

While outside groups have been disarmed, progressives in Congress have found it increasingly difficult to steer the agenda from inside. During negotiations of the American Rescue Plan, the only major legislation Biden has passed so far, the Congressional Progressive Caucus, the largest and most organized sector of the party’s progressive wing, got functionally shut out of the $2 trillion package, with its top priority on raising the minimum wage left behind. Still, the entire CPC voted for the package despite having the votes to hold it up, just as they did (save for AOC) during a moment of leverage a year prior, as the stock market cratered ahead of the CARES Act. Indeed, the CPC has pointed to the size of the ARP package, more than any particular provision within it, as its biggest win.

#### September is jam packed

Jordain Carney, 9-7-2021, "Democrats stare down nightmare September," TheHill, https://thehill.com/homenews/senate/570825-democrats-stare-down-nightmare-september

Democrats are staring down a nightmare September, a month jam-packed with deadlines and bruising fights over their top priorities.

The numerous legislative challenges in a condensed timeline will test Democratic unity and provide plenty of opportunities for Republicans to lay political traps just a year out from the 2022 midterm elections, where they are feeling increasingly bullish about their chances.

When lawmakers return to Washington, they’ll have to juggle averting a government shutdown in a matter of days with Democrats' self-imposed deadline for advancing an infrastructure and spending package that is at the center of President Biden’s economic and legislative agenda and sparking high-profile divisions.

That’s on top of a looming decision about the debt ceiling, a voting rights clash set to come to the Senate floor in mid-September, lingering Afghanistan fallout and, in the wake of a controversial Supreme Court decision, a heated fight over abortion.

## 1AR

### 1AR---adv---inequality

### 1AR---adv---democracy

### 1AR---states cp

#### Technical assistance

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. 219. Antitrust Modernization Commission. 2/4/2007. https://govinfo.library.unt.edu/amc/report\_recommendation/chapter2.pdf

The DOJ and the FTC provide extensive technical assistance to nascent competition law regimes.61 The agencies use a variety of means—such as supplying on-site, long-term advisors and conducting workshops involving personnel from agencies in several countries— to provide assistance and training.62 Such training assists other countries in the development of their enforcement institutions as well as in their understanding of the appropriate economic and legal underpinnings of sound competition policy.63 It provides assistance in “the development of framework laws,” and in the “training of personnel in the substantive legal principles, analytical framework, and investigative techniques . . . .”64 Taken together, these services will foster greater cooperation and convergence on sound antitrust law principles.65

#### Agencies fight it---labor is distinct from their examples.

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

#### Kills democracy

Peter M. Shane 03. Joseph S. Platt-Porter, Wright, Morris and Arthur Professor of Law, Moritz College of Law, The Ohio State University and Distinguished Service Professor Adjunct of Law and Public Policy, H. J. Heinz III School of Public Policy and Management, Carnegie Mellon University. "When Inter-Branch Norms Break Down: Of Arms-for-Hostages, Orderly Shutdowns, Presidential Impeachments, and Judicial Coups," Cornell Journal of Law and Public Policy: Vol. 12: Iss. 3, Article 3. Available at: http://scholarship.law.cornell.edu/cjlpp/vol12/iss3/3

The reason this matters is complex. We have a national system of government whose orderly and effective operation depends to an exceptional degree upon certain norms of cooperation among its competing branches. The strength of those norms is essential to securing the primary political asset that our government design was intended to help realize: an especially robust form of democratic legitimacy. If recent norm-bending initiatives constitute a trend, rather than a series of coincidental, but unlinked episodes, then the capacity of our government to manifest this particular form of legitimacy may be endangered. Such a development should not proceed unnoticed.

#### means the counterplan links to the net benefit---congress would be involved in preemption fights which saps time and resources

Michael Shultz and John Husband 85. \*Associate, Holland and Hart, Denver Colorado. J.D., University of Utah (1984); M.A., University of Northern Colorado (1974); B.S., Illinois State University (1973). \*\*Partner, Holland and Hart, Denver, Colorado. J.D., University of Toledo (1977); B.S., Ohio State University (1974). “Federal Preemption under the NLRA: A Rule in Search of a Reason”. 62 Denv. U. L. Rev. 531 (1985). https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2806&context=dlr

The Garmon doctrine has been transformed into a rigid analytical method which the Supreme Court uses to resolve federal preemption questions. First, the Court determines whether the conduct at issue is actually or arguably protected or prohibited by the NLRA. 53 Although the Court does not usurp the Board's power, it must decide whether the conduct sought to be regulated by the state is within the ambit of the NLRA. Occasionally, forgetting its manners, the Supreme Court determines whether the conduct being considered is protected or prohibited.5 4 The second part of the analytical process is to determine whether one of the exceptions to the rule applies. Thus, the Congress engages in a pigeon-holing exercise as it tries to decide whether the facts of the case being considered fit either the "traditional state concern" 55 or "merely peripheral concern" exception. 56 Finally, the Court decides whether the state action would interfere with the actually or arguably protected or prohibited conduct. 5 7 When the state regulates only some aspects of a labor dispute, it is not immediately clear whether the state action will unreasonably interfere with the federal law. Before Garmon, the Court applied a test based on the general versus specific nature of the state law. 58 A state law of general applicability is less likely to interfere with federal labor law than a state law specifically designed to regulate labor-management relations. 59 The Court now looks to the elements of the state cause of action to determine whether they are identical with the federal claim. 60

#### Their ev says antitrust law doesn’t preempt states---our ev assumes that and says state antitrust laws can still be preempted.

Richard A. Samp 14. Chief Counsel, Washington Legal Foundation. The Role of State Antitrust Law in the Aftermath of Actavis. 15 MINN. J.L. SCI. & TECH. 149 (2014). https://scholarship.law.umn.edu/mjlst/vol15/iss1/14

The Court has been particularly quick to find preemption when state antitrust law has an impact on labor law, an area in which federal law is pervasive.20 Indeed, on at least one occasion, the Court found that a claim arising under state antitrust law was preempted by federal labor law even though the Court concluded that the conduct that gave rise to the state claim could proceed as a claim under federal antitrust law.21 The Court explained that “Congress and this Court have carefully tailored the antitrust statutes to avoid conflict with the labor policy favoring lawful employee organization, not only by delineating exemptions from antitrust coverage but also by adjusting the scope of the antitrust remedies themselves.”22 The Court said that state antitrust laws “generally have not been subjected to this process of accommodation” and thus that “[t]he use of state antitrust law . . . [must] be pre-empted because it creates a substantial risk of conflict with policies central to federal labor law.”23

### 1AR---infrastructure da

**Yes extinction---AND turns warming**

**Starr 14** {Steven, Senior Scientist for Physicians for Social Responsibility, Director of the Clinical Laboratory Science Program (Missouri), commentator in the Bulletin of the Atomic Scientists and the Strategic Arms Reduction, Associate member of the Nuclear Age Peace Foundation, “The Lethality of Nuclear Weapons: Nuclear War has No Winner,” Global Research: Centre for Research on Globalization, 6/5, http://www.globalresearch.ca/the-lethality-of-nuclear-weapons-nuclear-war-has-no-winner/5385611}

Nuclear war **has no winner**. Beginning in 2006, several of the world’s **leading climatologists** (at Rutgers, UCLA, John Hopkins University, and the University of Colorado-Boulder) published a series of studies that evaluated the long-term environmental consequences of a nuclear war, including baseline scenarios fought with **merely 1%** of the explosive power in the US and/or Russian launch-ready nuclear arsenals. They concluded that the consequences of even a “small” nuclear war would include **catastrophic disruptions** of global climate[i] and **massive destruction** of Earth’s protective ozone layer[ii]. These **and more recent studies** predict that global agriculture would be so negatively affected by such a war, a global famine would result, which would cause up to **2 billion people to starve to death**. [iii]¶ These **peer-reviewed** studies – which were analyzed by the **best scientists in the world** and found to be without error – also predict that a war fought with less than half of US or Russian strategic nuclear weapons would **destroy the human race**.[iv] In other words, a US-Russian nuclear war would create such extreme long-term damage to the global environment that it would leave the Earth **uninhabitable** for humans and most animal forms of life.¶ A recent article in the Bulletin of the Atomic Scientists, “Self-assured destruction: The climate impacts of nuclear war”,[v] begins by stating:¶ “A nuclear war between Russia and the United States, even after the arsenal reductions planned under New START, could produce a nuclear winter. Hence, an attack by either side could be **suicidal**, resulting in self-assured destruction.”¶ In 2009, I wrote an article[vi] for the International Commission on Nuclear Non-proliferation and Disarmament that summarizes the findings of these studies. It explains that nuclear firestorms would produce millions of tons of smoke, which would rise above cloud level and form a global stratospheric smoke layer that would **rapidly encircle the Earth**. The smoke layer would remain for at least a **decade**, and it would act to destroy the protective ozone layer (vastly increasing the UV-B reaching Earth[vii]) as well as block warming sunlight, thus creating Ice Age weather conditions that would last **10 years** or longer.¶ Following a US-Russian nuclear war, temperatures in the central US and Eurasia would fall below freezing every day for one to three years; the intense cold would **completely eliminate growing seasons for a decade** or longer. No crops could be grown, leading to a famine that would **kill most humans and large animal populations**.¶ Electromagnetic pulse from high-altitude nuclear detonations would destroy the integrated circuits in all modern electronic devices[viii], including those in commercial nuclear power plants. Every nuclear reactor would almost **instantly** meltdown; every nuclear spent fuel pool (which contain many times more radioactivity than found in the reactors) would boil-off, releasing vast amounts of **long-lived** radioactivity. The fallout would make most of the US and Europe **uninhabitable**. Of course, the survivors of the nuclear war would be **starving to death anyway.** Once nuclear weapons were introduced into a US-Russian conflict, there would be little chance that a nuclear holocaust could be avoided. Theories of “limited nuclear war” and “nuclear de-escalation” are **unrealistic**.[ix] In 2002 the Bush administration modified US strategic doctrine from a retaliatory role to permit preemptive nuclear attack; in 2010, the Obama administration made only incremental and miniscule changes to this doctrine, leaving it essentially unchanged. Furthermore, Counterforce doctrine – used by both the US and Russian military – emphasizes the need for preemptive strikes once nuclear war begins. Both sides would be under immense pressure to launch a preemptive nuclear first-strike once military hostilities had commenced, especially if nuclear weapons had already been used on the battlefield.

#### Internationally---NDCs are screwed

Sachs '20 [Noah; 5/5/20; Professor of Law and Director of the Law School's Robert R. Merhige, Jr. Center for Environmental Studies at the University of Richmond, JD from Stanford Law School; "The Paris Agreement in the 2020s: Breakdown or Breakup?" Ecology Law Quarterly, Vol. 46, Issue 3, p. 865-910/]

The Agreement requires, as a binding treaty obligation, that each party submit an NDC and report on its progress.27 However, at the insistence of the Obama Administration, which cited the need to avoid Senate ratification, there is no legally binding requirement to actually achieve the goals set forth in an NDC.28 It is up to each party to implement policies to achieve its NDC, and there is no sanction for failing to reach the target. The nonbinding nature of NDCs has several consequences that make the Paris Agreement fragile and prone to defections. States cannot compel other states to submit an ambitious NDC or punish states for falling short. There is nothing in the Agreement, moreover, that requires a party to justify its NDC in relationship to reaching the treaty’s overall two-degree goal. No provision requires a party to show, for example, that its pledge, in coordination with other nations making a similar level of effort, would achieve this temperature goal. The treaty allows governments to set pledges solely on the basis of domestic convenience and capability. Seen in this light, as Anne-Marie Slaughter has noted, the Agreement is mainly a “statement of good intentions.”29 The parties opted for this voluntary approach because a “tougher” agreement with binding targets and enforceable sanctions would not have attracted the participation of major emitters, including the United States.30 Many proponents of the Agreement contend that it was the best that could have been achieved in 2015, after years of fruitless negotiation on legally binding targets and timetables.31 The voluntary structure was also the natural evolution of negotiations since 2009 that centered on a pledge-and-review approach.32 The Agreement’s lack of bindingness has been lauded on the grounds that states’ GHG-reduction pledges are likely to be more ambitious than commitments states would submit under an alternative, legally binding regime with tough sanctions.33 As the IPCC has explained, “states may prefer [that] legally binding agreements . . . embody less ambitious commitments, and [states] may be willing to accept more ambitious commitments when they are less legally binding.”34 Voluntary pledges could be more effective in the long run than mandatory, legally binding commitments of lesser magnitude. The problem with relying on voluntary pledges, however, is that if the aggregate emissions reductions expected under the NDCs are insufficient to keep warming within tolerable levels, there is no stick to force states to commit to greater reductions. We now have a short window of time to slash global GHG emissions, but the Agreement offers no mechanism to force emissions reductions on parties or even to allocate effort among the parties. It rests on the vicissitudes of voluntary action, with each party deciding how much effort it is willing to make. The emissions gap—the shortfall in the sufficiency of the voluntary pledges—was obvious at the Paris conference. Analysts quickly predicted that if all the NDCs submitted under the Agreement in 2015-2016 were fully implemented by 2030 (which is highly unlikely), global temperatures would increase 2.7 to 3.5 degrees Celsius beyond preindustrial levels,35 a catastrophic level of warming. Negotiators knew that the voluntary pledges were nowhere near sufficient to achieve the ultimate goal of the treaty: keeping global warming to “well below” 2 degrees Celsius compared to preindustrial temperatures and “pursuing efforts” to limit the temperature increase to 1.5 degrees Celsius.36 The parties took what they could get in 2015, fully aware of this emissions gap, and hoped the Agreement would spur collective progress over time. The long-term success of the Agreement therefore depends on the optimistic vision of what I call an “upward spiral,” where early-stage cooperation at Paris will result in parties making progressively more ambitious commitments in the future. As parties work toward reasonably achievable NDCs and continue to build trust, they may be willing to make deep cuts in emissions, secure in the knowledge that other parties are making similar sacrifices. This vision of an upward spiral in turn depends on two assumptions: first, that the so-called “ratchet mechanism” of the Agreement will operate as intended, and second, that pressure from other parties to aim higher in the ambition of NDCs, which I call the “peer pressure proposition,” will be sustained over several decades. Both of these assumptions are attractive, widely held, and wrong. A. The Paris Agreement’s Ratchet Mechanism The ratchet mechanism refers to the provisions of the Paris Agreement that require parties to submit progressively more “ambitious” NDCs over time. “Ambitious” in this context means NDCs that commit a state to progressively deeper GHG emissions cuts or, for many developing states, NDCs that allow an increase in expected emissions, but at a slower rate than current projections. The ratchet mechanism is crucial to slowing climate disruption. It is the only internationally adopted legal text that encourages parties to reduce their GHG emissions over a multidecade timespan. The ratchet mechanism is not spelled out in any single article of the Agreement. Rather, the “ratchet” results from a collection of scattered provisions, including the following: • Each Party shall “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.”37 • Each Party’s successive NDCs “will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition . . . .”38 • Each Party shall regularly provide information on national inventories and information “necessary to track progress made in implementing and achieving” its NDC.39 • A Party may at any time “adjust” its NDC “with a view to enhancing its level of ambition.”40 • Beginning in 2023 and every five years thereafter, the parties shall “take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of [the] Agreement and its long-term goals . . . .”41 • Parties will then submit successive NDCs “informed by the outcomes of the global stocktake[s] . . . .”42 These provisions, though skeletal, suggest how the parties expect an upward spiral to unfold. They create a detailed timeline in which the parties will submit NDCs, prepare emissions inventories at least every two years, take stock every five years of progress under the Agreement (2023, 2028, etc.), and submit pledges that “represent a progression beyond the Party’s then current [NDC]” in 2020, 2025, 2030, and so on.43 Some scholars believe that parties will follow the ratchet mechanism quite literally, even if domestic circumstances are unfavorable. Christina Voigt, for example, has argued that even if a party were in a “financial, political or economic crisis,” there would be no grounds for “a decrease in what can be considered its ‘highest possible ambition’ compared to the level contained in the previous NDC.”44 According to Voigt, each submission of an NDC sets a “floor” for the next NDC.45 Every party is required to go above and beyond its previous NDC with each new submittal.46 Voigt suggests that the Agreement somehow locks in an upward spiral of progressively more ambitious commitments. But this optimism is misplaced. The text of the ratchet is not self-executing. Given the lack of penalties for failing to achieve NDCs, parties still face strong incentives to defect or free ride under the Agreement, to pledge only minimal action, or to appear to take action while actually imposing few costs on their domestic interest groups. Many states— especially those in “financial, political, or economic crisis”—will prioritize the needs of their domestic constituencies over their voluntary, nonbinding Agreement pledges. In short, the ratchet mechanism is a necessary but not sufficient condition for a consistent, upward trajectory of NDCs. Parties must somehow be incentivized to stick with it. B. The Peer Pressure Proposition and Its Fallibility According to many scholars, peer pressure will be the glue that holds the Agreement together.47 Under the pledge-and-review system, parties will feel pressure from other parties to submit and achieve progressively more ambitious NDCs. Additionally, the ratchet mechanism could be sustained if parties fear reputational costs for noncooperative behavior, such as failing to achieve their own NDCs. If parties perceive that others are making progress toward their respective NDCs at each review conference, they will be more willing to undertake progressively deeper cuts themselves.48 In this view, the five-year “stocktake” review conferences—a collective “show and tell” on the international stage49—will be the key fora for exercising peer pressure under the Agreement. I refer to these arguments about disclosure, reciprocity, and reputation as the “peer pressure proposition.” The peer pressure proposition holds that positive peer pressure or perceived reputational costs will encourage parties to make and achieve progressively more ambitious commitments under the Agreement.50 There is reason to question whether the peer pressure proposition can consistently work to support the Paris Agreement over several decades, especially through global political and economic upheavals. The peer pressure proposition needs to be critically scrutinized, rather than merely assumed. Below, I challenge some key assumptions of the peer pressure proposition, arguing that skepticism is warranted for three main reasons: states will prioritize domestic interests over international reputation, “naming and shaming” strategies are not likely to be effective, and it is not assured that states will find it easier to make deep emissions cuts in the near future. 1. Domestic interests will likely outweigh perceived international reputational concerns. One reason for skepticism is that the peer pressure proposition excessively emphasizes the role of international reputation. Reputation surely matters in international law. As Ian Johnstone has argued, “states care about collective judgment of their conduct because they have an interest in reciprocal compliance by and future cooperation with others . . . .”51 International reputation is but one consideration for states, however. A more nuanced account would acknowledge that states make a cost-benefit calculus on the stringency of their international climate commitments, and their calculus gives substantial weight to domestic interests. These domestic interests include the immediate pressures of electoral politics, the expected impact of deep emissions cuts on domestic industries, and prioritization of national economic growth over global emissions reductions. In each party’s cost-benefit calculus, powerful domestic economic interests will undoubtedly weigh as much or more than concerns about international reputation, particularly because any reputational “hit” under the Agreement is tied to a nonbinding climate pledge. NDCs are legally unenforceable pledges, so the reputation costs of failing to achieve them are diluted.52 Even if many governments were to perceive that net benefits outweigh net costs in committing to ambitious NDCs, the distribution of costs on powerful domestic actors might act as a drag on national ambition. For example, if veto players in the oil, coal, or palm oil industries retain their political influence with the governments of major emitters (for example, Russia, Saudi Arabia, South Africa, Indonesia), which seems likely, these governments might perceive international pressure to submit more ambitious NDCs, combined with intense domestic pressure to do less. As a consequence, these important states might continue to submit weak NDCs throughout the 2020s. Russia is emblematic of this group. It is the fourth largest GHG emitter, yet it held off on ratifying the Paris Agreement until 2019, and its NDC is so weak that Russia is already achieving its 2030 target.53

#### Manchin’s vote is inevitable

Andrew Solender 9-5 [Andrew Solender, Senior Forbes News Reporter covering Politics, "White House Says Manchin ‘Very Persuadable’ On $3.5 Trillion Budget Bill As Colleague Says He Always ‘Gets To The Right Place’," Forbes, https://www.forbes.com/sites/andrewsolender/2021/09/05/white-house-says-manchin-very-persuadable-on-35-trillion-budget-bill-as-colleague-says-he-always-gets-to-the-right-place/?sh=443a65b72052, hec]

Sen. Joe Manchin (D-W.Va.) is likely to vote for a $3.5 trillion spending package in the end despite his current opposition to its price tag – that’s according to a top White House official and a Senate colleague who place his latest comments within a predictable cycle that ends with him lining up with Democrats. White House chief of staff Ron Klain said in a CNN interview on Sunday that Manchin is “very persuadable,” and that his concerns about the rising debt and inflation can be addressed through the package’s tax hikes on wealthier Americans. Klain also shrugged off the notion Manchin’s rejection of the $3.5 trillion price tag dooms the bill, telling host Dana Bash that if he had a nickel for every time someone told him the package was dead, “I would be a very, very rich person.” Manchin’s stated opposition to the package, which is expected to include spending on social programs including Medicare expansion, universal pre-K and other longtime liberal priorities, is that it will overheat an already fast-growing economy and doesn’t take into account issues like debt and inflation. Sen. Amy Klobuchar (D-Minn.) said on CNN that Manchin has “many times, been willing to get to a place that’s the right place to be,” noting that he voted to pass Democrats’ $1.9 trillion stimulus bill along party lines in March despite his initial opposition. Klobuchar added that she was “not surprised” by Manchin voicing his opposition to the spending package because “this was going to be a tough negotiation,” but reiterated he “gets to the right place.”

#### Biden’s PC’s resilient

1NC Everett 9-16 (Burgess Everett, staff reporter @ Politico, Dems call in big gun as they face huge Hill tests, <https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952>, y2k)

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

#### Too old---they highlighted the part about Build Back Better---infrastructure passes inevitably

David 1NR Morgan 21 [Reuters, "Pelosi sets Oct 1 target for infrastructure, Biden spending bill," 8-21-2021, https://www.reuters.com/world/us/pelosi-sets-oct-1-target-infrastructure-biden-spending-bill-2021-08-22/, hec]

WASHINGTON, Aug 21 (Reuters) - U.S. House of Representatives Speaker Nancy Pelosi on Saturday set an Oct. 1 target date for passing President Joe Biden's multitrillion-dollar infrastructure and social spending agenda. In a "Dear Colleague" letter to her fellow Democrats, Pelosi also warned against delaying next week's expected vote on a $3.5 trillion budget resolution that some party centrists have threatened not to support. "Any delay to passing the budget resolution threatens the timetable for delivering the historic progress and the transformative vision that Democrats share," the top House Democrat said in the letter. The Senate has already passed both a $1 trillion bipartisan infrastructure bill to rebuild America's roads, bridges, airports and waterways, and the budget resolution, which includes spending instructions for Biden's Build Back Better Plan on education, childcare, healthcare and climate measures. "The House is hard at work to enact both the Build Back Better Plan and the bipartisan infrastructure bill before October 1st, when the (infrastructure bill) would go into effect," Pelosi said in the letter. The infrastructure bill and the more sweeping social spending package are top domestic priorities for Biden.

#### Pelosi solves

Jacob 1NR Pramuk 9-15 [Jacob Pramuk, “Biden meets with Sens. Manchin, Sinema as Democrats try to build support for $3.5 trillion bill,” CNBC, 6-10-2021, https://www.cnbc.com/2021/09/15/joe-biden-to-meet-with-joe-manchin-kyrsten-sinema-about-3point5-trillion-bill.html, hec]

President Joe Biden was set to meet Wednesday with Sens. Joe Manchin and Kyrsten Sinema as he tries to nudge the skeptical Democrats to back his sprawling $3.5 trillion economic plan. The president spoke with Sinema, who represents Arizona, at the White House in the morning. He was expected to meet with Manchin, a West Virginia lawmaker, later in the day. Both centrists have criticized the proposed $3.5 trillion price tag, and Manchin has called on party leaders to delay votes on the legislation. The meetings come at a pivotal point for an agenda that Democrats hope will offer a lifeline to households and stymie Republican efforts to win control of Congress next year. Party leaders gave congressional committees a Wednesday deadline to write their portions of the bill, and they hope to send it to Biden’s desk in the coming weeks. Democrats have to navigate a political maze before they can pass what they call the biggest investment in the social safety net in decades. While the party does not need a GOP vote to approve the bill through budget reconciliation, a single Democratic defection can sink it in the Senate, giving Manchin and Sinema massive leverage to shape the plan. House Speaker Nancy Pelosi, D-Calif., can lose only three votes in her caucus and pass the legislation. She has to balance the often competing interests of centrists wary of $3.5 trillion in spending and progressives who see the sum as a minimum investment. The plan’s success has huge stakes for Biden, who has seen his approval ratings dip amid a chaotic U.S. withdrawal from Afghanistan and a coronavirus resurgence fueled by the delta variant. The president has cast his economic plan as a jolt to the working class and an overdue effort to mitigate climate change.

#### Biden passing tough bills expands his PC

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

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

#### Mishighlighted ev---spending bill is shaky, infrastructure is locked in

Alexander 1NR Nazaryan 9-8 [Alexander Nazaryan, Senior White House Correspondent, "The two mistakes that ruined Biden's summer," 9-8-2021, https://news.yahoo.com/the-two-mistakes-that-ruined-bidens-summer-090057360.html, hec]

In the weeks to come, Congress will decide the fate of Biden’s $3.5 trillion human infrastructure proposal, as well as that of a smaller, bipartisan $1.2 trillion proposal focused on traditional infrastructure. If those measures pass, the White House believes, the summer’s challenges will quickly be relegated to a distant memory. “Our heads are down to get that across the finish line,” the senior administration official said, citing some 130 calls between the White House legislative office and members of Congress and their staffs. He described the mood in the White House as “pretty upbeat” but “sober” about the challenges that remain. Biden’s predecessor, Donald Trump, was frequently occupied with day-to-day coverage of his administration, which often had the effect of turning problems into crises. The new president is taking the opposite approach, trying to stay focused on policy while keeping frustrations about media coverage largely private. “There are times when events are larger than any president,” says Eric Dezenhall, a leading crisis communications expert in Washington who worked in the Reagan administration. “It’s not the messaging that’s the big problem; with Afghanistan, it’s the events and the notion that they could have been handled differently. We all know Afghanistan was a no-win situation, but there are core questions that are not being answered.” Biden has struck a defiant tone on the withdrawal and has declined to fire officials like national security adviser Jake Sullivan, whom many hold responsible for the chaotic operation. Only 33 percent of Americans agree that Biden has handled the withdrawal well, with far more (55 percent) disapproving, according to a recent Yahoo News/YouGov poll. “With Delta, Biden has greater moral authority,” Dezenhall told Yahoo News. But that authority, too, could slip as the pandemic looks to continue into the fall and, very likely, beyond. Unemployment benefits are expiring. Evictions loom. Offices remain closed and schools could close too. Last week’s lackluster employment report (only 235,000 new jobs added in August) only underscored the precariousness of the recovery. Already, public approval of Biden’s pandemic response has dropped 10 percentage points since late June. Even though the Delta surge appears to have peaked, new variants are on the way. As in the earliest days of the pandemic, Americans are stockpiling toilet paper in fear of looming shortages. Republicans who have struggled to define Biden now see an opening, pressing a case that is not entirely coherent but could prove politically effective all the same. Gov. Greg Abbott of Texas and Gov. Ron DeSantis of Florida have been fighting him on mask mandates in school, igniting a culture war that seemed to have died down in late spring. And former President Donald Trump has issued a dozen press releases in the last two weeks calling on Biden to resign over his handling of Afghanistan, a breach of post-presidential decorum that is nevertheless indicative of where conservatives stand. Despite the right-wing caricature of a senescent president controlled by his advisers, Biden is well known to be impatient and to favor his own counsel over that of advisers, eager to show Ivy League-trained experts that they were wrong to dismiss him when he was vice president to the more erudite Obama. And he is acutely aware of the historical moment and the opportunities it presents, openly courting comparisons to transformational presidents like Franklin Roosevelt and Lyndon Johnson. But the moment is also rife with dangers, as Biden has discovered in the last two months. In early July, he made two promises that would come undone in the weeks to come, leaving him in a weakened position. On July 4, the White House had a party on the South Lawn. Some had advised against the affair, since the coronavirus pandemic was not over. Having hundreds of people gathering in the presidential backyard for burgers and blues music might make it seem like it was. Biden went ahead with the party, because that was exactly the image he wanted to project, that the pandemic was being brought to its conclusion as a result of his determined leadership. The event was billed as “America’s Back Together,” maskless, vaccinated and no longer 6 feet apart. “Today, we’re closer than ever to declaring our independence from a deadly virus,” the president said, making clear that victory was not yet complete, but coming ever closer, with fewer than 10,000 daily cases being recorded daily by the end of June, a precipitous drop from only six months before. “We’ve gained the upper hand against this virus,” he added a few moments later. The pandemic, he said, “no longer controls our lives.” Then music began to play and the party began. Four days later, Biden made another promise, this one on a very different topic. Trump had made an agreement with the Taliban in 2020 to pull U.S. military forces out of Afghanistan by 2021; but Biden, a longtime critic of the conflict, not only embraced that goal but accelerated the timeline. Now he was defending that decision, vowing that when the last American troops left, the government of Ashraf Ghani would assert his rule, with the help of the U.S.-trained Afghan National Army. “The likelihood there’s going to be the Taliban overrunning everything and owning the whole country is highly unlikely,” the president said. There would be no airlifts of the kind Americans had seen at the dispiriting conclusion of the Vietnam War in 1975, he asserted. Two months later, Biden appears to have made fateful miscalculations on both fronts. The Delta variant has reversed the progress the nation had made throughout the winter and spring, leading to a summer surge that has seen deaths and hospitalizations rise to levels not seen in months. Schools across the Southeast have shuttered. Corporations are telling people to stay home. Bars and restaurants are facing the crushing prospect of yet another pandemic winter. In the White House, masks are back on, as they are in Los Angeles and many other parts of the country. Last month, Oregon became the first state in the country to reimpose an outdoor mask mandate, even for vaccinated people. Seattle recently followed suit. “President Biden absolutely declared a victory too soon,” Dr. Leana Wen, the former Baltimore health commissioner, told Yahoo News last month. Since then, his administration has struggled to formulate a coherent approach — and message — on vaccine booster shots, the necessity of which is in dispute. Dr. Kavita Patel, a Brookings Institution fellow who served as a health policy expert in the Obama administration, thinks that Biden made no “obvious mistakes” but adds that his administration could have provided clearer guidance to schools in July. She also thinks the Biden administration could be doing more to gather data on breakthrough infections and long-haul COVID while also creating a nationwide vaccine registry. “He’s trying to convey that we’re not out of this pandemic without terrifying the country,” says Dezenhall, the D.C.-based crisis manager. Biden could only do so much to control the spread of the Delta variant. He and his top advisers knew that it was coming, and that it would lead to a surge similar to the one that the United Kingdom experienced through the spring. Nor did they have any obvious means to temper the weariness of an American public eager to get on with ordinary life. The same could be said for Afghanistan, a two-decade war of which the American public had grown unambiguously tired. As vice president to Barack Obama, Biden had opposed surging troops there. He and Trump may agree on little else, but they share an antipathy to military intervention without end. Little seemed to prepare the White House for the swiftness with which the Afghan military collapsed in the face of a determined Taliban advance. Ghani, the president, fled Kabul, leading to the rapid collapse of the central government. The images of Afghans clinging to the wheels of American aircraft were exactly what Biden had promised to avoid. “The Afghanistan story will have legs,” Bremmer believes. “It is much bigger than Benghazi,” he adds, referencing the 2012 attack by militants on a U.S. consulate in Libya that left four Americans dead. Investigations into the attack hobbled the presidential prospects of Hillary Clinton, who was then the secretary of state. The twin crises pummeled the White House at a vulnerable moment, as 61 percent of those polled said the country was headed down the wrong track. On both issues, the White House believes it remains on firm footing. Polls are snapshots, and narratives change quickly in Washington. Biden would have liked to head into the fall with a stronger standing, and an infrastructure deal could have him riding high once more. “President Biden has an enormous reserve of credibility,” says Celinda Lake, who conducted polling for Biden’s presidential campaign. “People agree with him on Afghanistan, and the images only convince American voters that the decision to withdraw and bring our troops and money home was the right one.” Lake added that “voters still trust Biden on COVID more than anyone else. And voters see that COVID and the economy are strongly linked.” The economy will be Biden’s top issue as members of Congress return to Washington and Afghanistan subsides, if only as a daily news story for U.S. outlets. Even as the president pushes for new spending, he has to be mindful of existing pandemic-related safety net programs now set to expire. On Tuesday, 7.5 million Americans stood to lose $300 unemployment payments. The federal eviction ban has also expired.