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### Inequality---1AC

#### Increased concentration of buyer power in labor markets drives inequality---only antitrust can address the supply and demand side of wage suppression.

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A détente is especially desirable today in light of the severe stagnation in American wages. In the past thirty-five years, U.S. gross domestic product has all in all grown but the purchasing power of the average worker has barely changed.3 Labor’s share of national income declined precipitously in the 2000s, and in the five years after the Great Recession it was lower than at any point since World War II.4 Because most people get most of their income from labor, and because those who get most of their income from capital tend to be wealthy, this income shift has dramatic consequences for inequality.

Economists and policymakers have advanced numerous explanations for this troubling trend ranging from the decline of unions, to tighter monetary policy, to increased trade liberalization, and more.5 One explanation that has received attention in recent years is an apparent epidemic of market concentration and flagging competition.6 A growing body of evidence suggests that over time fewer and fewer firms have come to dominate sectors across the economy.7 One study found that from 1982 to 2012, the share of sales by the sectors’ top four firms increased in manufacturing, finance, services, utilities, retail trade, and wholesale trade.8 Average markups above cost—a manifestation of market power—rose from eighteen percent in 1980 to sixty-seven percent in 2014.9 This increase in concentration is due, in part, to a growing wave of mergers. By one count over 325,000 mergers have been announced since 1985.10 That year, around 2,000 mergers with a value of a little over $300 billion were announced.11 In 2018, 15,000 mergers occurred—valued at just under two trillion dollars.12

The ability of firms to charge prices for their products or services that exceed the competitive level harms workers in their role as consumers, and the reverberating inefficiencies have consequences for wages as well.13 Workers are harmed more directly, though by firms with buyer power in labor markets. Instead of enabling firms to charge high prices for the goods or services they sell, buyer power—also known as monopsony power—allows firms to push wages below the level workers would receive in competitive labor markets.

A recent study applied the Herfindahl-Hirschman Index (HHI), which is used to measure market concentration. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (“the agencies”) used HHI in merger review, and found that at least forty percent of job markets fell into the “highly concentrated” category, making them especially susceptible to anticompetitive behavior by employers.14 The hiring markets for the twenty-five percent most concentrated occupations in almost every commuting zone in the country have concentration levels nearly tripled the “highly concentrated” threshold.15 In commuting zones across middle America, the hiring market for nearly every occupation is highly concentrated.16 As discussed below, a concentrated labor market generally increases the buyer power of participants in that market. Recent research on labor supply elasticity, which is an indicator of vulnerability to employers’ market power, further challenges traditional assumptions of competitiveness in labor markets.17

Historically, antitrust enforcers have given far less attention to firms’ power as buyers than as sellers and have been particularly hesitant to check their power as buyers of labor. However, the tide may be beginning to change. Federal and state enforcers have begun to challenge anticompetitive labor contracts,18 and there is a small but growing body of precedent addressing increased buyer power in mergers.19 In 2016, the Obama Administration’s Council of Economic Advisors issued a report describing the problem of labor market power and encouraging greater attention to the issue by the antitrust enforcement agencies.20 Separately, then-Acting Assistant Attorney General Renata Hesse stated that antitrust enforcement efforts should not only be concerned with the welfare of consumers, but should “also benefit workers, whose wages won’t be driven down by dominant employers with the power to dictate terms of employment.”21 Nevertheless, to date, the agencies have never blocked a merger on the basis of harm to workers.

There are many reasons that may account for the dearth of enforcement, including misunderstandings of the relationship between labor and antitrust laws, the momentum of precedent focused on seller-side harms, and the resistance of some to increased antitrust enforcement as a general matter.22 In addition to these practical and ideological impediments, mistaken intuitions about the economics of buyer power create obstacles for enforcement. At first glance it would seem that if firms use their buyer power to lower their costs, downstream customers are ultimately benefitted. Therefore, the consumer welfare standard, which underpins modern antitrust enforcement, would seem to counsel against intervention contrary to buyer power. In most cases, though, this intuition is simply wrong.23 More competitive labor markets are not just good for workers; they are good for consumers too.

Clarifying the relevant interests at stake is crucial as policy reforms begin in earnest, and there is reason to believe that such reforms are on the horizon. Several politicians have recently advocated for greater antitrust scrutiny of labor markets. For example, in 2017 Senator Amy Klobuchar introduced a bill that would require the enforcement agencies to pay greater attention to buyer power in merger review.24 Senator Elizabeth Warren—who seeks more interventionist antitrust policy on many fronts25—and Senator Cory Booker—who in 2017 sent a letter to the DOJ and FTC citing concern with the failure of the agencies to address labor market power—have also taken up the cause.26

Labor market issues are also garnering increased attention from antitrust scholars.27 In an article published in 2018, C. Scott Hemphill and Nancy Rose argued for more interventionist merger policy directed at various forms of buyer market power.28 The same year, Suresh Naidu, Eric Posner and Glen Weyl published Antitrust Remedies for Labor Market Power, a sweeping analysis of the myriad options available to enforcers to promote more competitive labor markets.29 This legal analysis has been spurred by a growing body of empirical work on buyer power in labor markets.30 An array of scholars concluded that labor market power is a problem and one that antitrust institutions should do more to address.

This paper similarly argues that buyer power—and specifically buyer power in labor markets—deserves greater antitrust scrutiny and, to that end, develops a framework for systematically evaluating labor market power in merger analysis. The enthusiasm of some progressive politicians for more interventionist antitrust policy has drawn skepticism from many antitrust practitioners and scholars who worry that reforms will unmoor antitrust policy from its foundational principles and turn antitrust enforcement over to political whims.31 At least with respect to labor market power, however, economic theory and empirical evidence support increased enforcement without any reform of the basic legal framework and without deviating from substantial consensus about the proper role for antitrust in the economy.

#### Antitrust is key---permissive guidelines enabled the rise in monopsonies, expanding a worker welfare standard to labor markets is key to wage equality.

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Of course, this is not the world in which we live. Even the corner grocery store knows it can raise its prices a little bit without losing all of its customers, which is what the standard competitive theory suggests. More and more, firms have demonstrated high and increasing levels of market power (Philippon 2019; Stiglitz 2019). At the same time, the bargaining power of workers has weakened.

It was never an equal match. An employer typically can find an alternative worker far more easily than a worker can find an alternative employer. This is especially so during slack periods in the labor market, or in places where there has been persistent unemployment. Leaving or losing a job is often greatly disruptive to workers and their families. There are mortgages to pay, children to feed, bills coming due. From the perspective of workers, jobs are not easily substitutable.

As the chapters in this volume make abundantly clear, this imbalance of market power has consequences. It enables firms to raise prices for goods and services—lowering the real incomes of workers. It enables firms to suppress wages of workers below what they would be in a competitive marketplace—contributing to the inequality crisis facing the country. This economic inequality gets translated into political inequality, especially in our money-driven politics, resulting in rules that evermore favor big corporations at the expense of workers. The growing political inequality, in turn, hampers economic performance, and ensures that most of the benefits of our anemic economic growth go to those at the very top (Stiglitz 2012).

In the middle of the 20th century, John K. Galbraith (1952) described an economy based on countervailing power—where labor institutions and government checked the power of large corporations and financial institutions. But policy choices over the past half century have upset this balance in ways that have weakened not only the workers, but also the economy and the country. This volume explores what has happened by concentrating on one understudied part of the problem: the labor market.

Explaining the Weakening of Workers’ Bargaining Power

Multiple factors have contributed to the weakening of workers’ bargaining position. This volume focuses specifically on the ways that employers have increased their market power over workers.

Employer Concentration

Permissive antitrust enforcement has promoted concentration across industries, reducing the number of employers—particularly those in rural areas (Stiglitz 2016).1 With few alternatives, workers must accept the low wages that large local employers offer. More precisely, limited competition by buyers—in this case, employers who buy labor services—gives rise to monopsony power.2 Any firm with monopsony power knows that if it hires more workers, it will drive up the wage. The marginal cost of hiring an additional worker is thus greater than the wage. The result is lower employment and lower wages than if there were a competitive labor market. The chapter by Marinescu in this volume forcefully documents the degree of monopsony in labor markets across the United States, especially in rural areas—areas where, not surprisingly, wages lag behind the rest of the country.

Collusion

Typically there is some, but limited, competition in the labor market, but it is competition that is insufficient to achieve anything approximating what would emerge in a truly competitive marketplace. But employers often do not like even this limited competition, because even some competition means that wages are higher than they would be with no competition. Thus, firms sometimes collude to not compete; and that collusion drives down wages. The incentives for firms to do this—if they can get away with it—are obvious: collusion has been a feature of capitalism from the start. As Adam Smith observed in The Wealth of Nations, “Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate. . . . Masters, too, sometimes enter into particular combinations to sink the wages of labour even below this rate. These are always conducted with the utmost silence and secrecy” (Smith 1776, book 1, chap. 8).

Even then, Smith had observed an asymmetry not only in bargaining power, but also in capitalists’ response to workers’ attempts to redress the balance. When workers combine their forces, “the masters . . . never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers, and journeymen” (Smith 1776, book 1, chap. 8). This stance, of course, was markedly different from capitalists’ own behavior—not only in labor markets, but elsewhere, too. As Smith put it in one of his most famous statements, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices” (book 1, chap. 10). This issue is central: to redress the natural imbalance of bargaining power, workers have to band together and engage in collective bargaining. Unions are critical. But it is precisely because unions have been somewhat successful in redressing the imbalance that employers have worked so hard to suppress them, as I comment later in this introduction.

Contracts

In multiple contexts, business enterprises have not been satisfied with the increased profits brought by greater market concentration and occasional collusion. Businesses have figured out how to sustain and amplify those profits by the clever design of contracts that are conceived to inhibit competition in the labor market. This is another method that enables them to drive down wages still further.3 The chapters by Evan Starr and Terri Gerstein (this volume) provide ample evidence of the harmful impact of the misuse of labor contracts, noting in particular that often-used ruses distort the true impact on workers. Noncompete agreements, by definition, reduce competition. There might be some justification for not allowing employees with knowledge of trade secrets to go to work for competitors, but that hardly applies to employees of fast-food chains.

Employers have also put into contracts provisions that weaken workers’ rights—and power—if a dispute arises. Inserting arbitration clauses into most contracts has moved dispute resolution out of the public domain— where it can be protected in the public interest, through transparency and basic standards—into private hands. This not only weakens workers’ position after a dispute arises, but also subtly changes the balance of power— making it easier for firms to take advantage of workers, knowing that their ability to get redress is so circumscribed. Making matters worse is a broader set of changes in legal frameworks that has hurt workers and consumers at the expense of corporations. For instance, the ability to bring class-action lawsuits, particularly in arbitration, has been greatly limited.

Asymmetric Information

The standard competitive theory assumes perfect information. Research over the past 50 years has explained how even a little information asymmetry can have a large impact. Employers have recognized this—they have figured out that such asymmetry can weaken workers’ position and lead to lower wages. They have responded by doing what they can to increase these asymmetries, sharing data with each other but insisting that workers keep their own compensation data confidential, and punishing employees who violate such confidentiality. The chapter by Harris in this volume describes the adverse effects of informational asymmetries, how firms have tried to increase these asymmetries, and what governments have done and can still do to promote transparency—and thus competition—in the labor market.

#### Worker welfare solves inequality and wages.

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.

#### Growing economic inequality drives diversionary nationalism and makes war inevitable.

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One of the oldest theories of nationalism is that states instill the nationalist myth in their citizens to divert their attention from great economic inequality and so forestall pervasive unrest. Because the very concept of nationalism obscures the extent of inequality and is a potent tool for delegitimizing calls for redistribution, it is a perfect diversion, and states should be expected to engage in more nationalist mythmaking when inequality increases. The evidence presented by this study supports this theory: across the countries and over time, where economic inequality is greater, nationalist sentiments are substantially more widespread.

This result adds considerably to our understanding of nationalism. To date, many scholars have focused on the international environment as the principal source of threats that prompt states to generate nationalism; the importance of the domestic threat posed by economic inequality has been largely overlooked. However, at least in recent years, domestic inequality is a far more important stimulus for the generation of nationalist sentiments than the international context. Given that nuclear weapons—either their own or their allies’—rather than the mass army now serve as the primary defense of many countries against being overrun by their enemies, perhaps this is not surprising: nationalism-inspired mass mobilization is simply no longer as necessary for protection as it once was (see Mearsheimer 1990, 21; Posen 1993, 122–24).

Another important implication of the analyses presented above is that growing economic inequality may increase ethnic conflict. States may foment national pride to stem discontent with increasing inequality, but this pride can also lead to more hostility towards immigrants and minorities. Though pride in the nation is distinct from chauvinism and outgroup hostility, it is nevertheless closely related to these phenomena, and recent experimental research has shown that members of majority groups who express high levels of national pride can be nudged into intolerant and xenophobic responses quite easily (Li and Brewer 2004). This finding suggests that, by leading to the creation of more national pride, higher levels of inequality produce environments favorable to those who would inflame ethnic animosities.

Another and perhaps even more worrisome implication regards the likelihood of war. Nationalism is frequently suggested as a cause of war, and more national pride has been found to result in a much greater demand for national security even at the expense of civil liberties (Davis and Silver 2004, 36–37) as well as preferences for “a more militaristic foreign affairs posture and a more interventionist role in world politics” (Conover and Feldman 1987, 3). To the extent that these preferences influence policymaking, the growth in economic inequality over the last quarter century should be expected to lead to more aggressive foreign policies and more international conflict. If economic inequality prompts states to generate diversionary nationalism as the results presented above suggest, then rising inequality could make for a more dangerous world.

The results of this work also contribute to our still limited knowledge of the relationship between economic inequality and democratic politics. In particular, it helps explain the fact that, contrary to median-voter models of redistribution (e.g., Meltzer and Richard 1981), democracies with higher levels of inequality do not consistently respond with more redistribution (e.g., Bénabou 1996). Rather than allowing redistribution to be decided through the democratic process suggested by such models, this work suggests that states often respond to higher levels of inequality with more nationalism. Nationalism then works to divert attention from inequality, so many citizens neither realize the extent of inequality nor demand redistributive policies. By prompting states to promote nationalism, greater economic inequality removes the issue of redistribution from debate and therefore narrows the scope of democratic politics.

#### Labor market inequities create slow and unstable growth---COVID proves.

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Why It Matters

It should be fairly obvious why these imperfections in the labor market matter so much: one of the most disturbing aspects of growth in the United States in recent decades is the growing inequality (see, e.g., Ostry, Berg, and Tsangarides 2019; Stiglitz 2012, 2019; and a rash of other books on the topic). Most of the gains in the economy have gone to the top 10 percent, the top 1 percent, and the top 0.1 percent. Some of the growing inequality has to do with increases in wage disparity—known as labor market polarization. But much of it has to do with the decreasing share of national income going to workers.8 This is where the decreasing market power of workers and the increasing market power of corporations comes in. This decreasing market power is more than just changes in technology or even globalization: it is also the broader changes in our economy, society, and politics—and especially the changes described earlier in this introduction and elsewhere in this volume—that have led to this growing imbalance of market power.

Research at the International Monetary Fund (Ostry, Berg, and Tsangarides 2014) and elsewhere (Ostry, Berg, and Tsangarides 2019) has highlighted the broader consequences of this growing inequality, even on economic performance. Economies that are more unequal are less stable and grow more slowly. In The Price of Inequality I explain the reasons that we pay such a high price for inequality.

The COVID-19 crisis has provided a dramatic illustration: inequalities in income translate into inequalities in health, especially in a society, like that of the United States, that relies on markets to dispense healthcare. The virus is not an equal opportunity virus—it appears to have the most devastating effects on people who have underlying health conditions. Our health inequalities are undoubtedly one of the reasons that the United States led the world in COVID-19 deaths.

Short-sighted employers did not provide sick leave and government did not require it—even when Congress seemed to recognize that workers without sick leave, who live paycheck to paycheck with virtually no money in the bank, would go to work even when they were sick. They had to work in order to survive, but that meant they helped to spread the disease. After lobbying by the large corporations, Congress decided that employers with more than 500 employees—almost half of the private labor force— were exempt from providing sick leave. With so few workers unionized, employees simply did not have the bargaining power to demand paid sick leave, personal protective equipment, or COVID-19 tests. Government should have required all these things, of course, and it had the power to do so under OSHA, but chose not to. Workers were desperate for the protection, but lacked the bargaining power to get it.

#### Monopsonies are key---inequality hollows out economics resilience---shocks are inevitable, only worker stability makes recovery possible.

Kate Bahn 21. Washington Center for Equitable Growth Testimony before the Joint Economic Committee, "Kate Bahn testimony before the Joint Economic Committee on monopsony, workers, and corporate power". Equitable Growth. 7-14-2021. https://equitablegrowth.org/kate-bahn-testimony-before-the-joint-economic-committee-on-monopsony-workers-and-corporate-power/

Thank you Chair Beyer, Ranking Member Lee, and members of the Joint Economic Committee for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor Market Policy and the interim Chief Economist at the Washington Center for Equitable Growth. We seek to advance evidence-backed ideas and policies that promote strong, stable and broad-based growth. Core to this mission is understanding the ways in which inequality has distorted, subverted and obstructed economic growth in recent decades.

Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality and made the U.S. economy less efficient. Reversing the trends that have led to a “second gilded age” is critical to encouraging a resilient economic recovery following the pandemic-induced economic crisis of 2020 and encouraging a healthy, competitive economy for the future.

Introduction

The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market and demonstrated that a rising tide does not lift all boats. Furthermore, economic evidence demonstrates how inequality results in an inefficient allocation of talent and resources while increasing corporate concentration that enriches the few while holding back the entire economy from its potential. Understanding the causes and consequences of the concentration of corporate power will guide policymaking in order to ensure that the economic recovery in the next phase of the pandemic will be broadly shared and ensure a more resilient economy.

“Monopsony” is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of “monopoly,” but instead of having only one producer of a good or service, there is effectively only one buyer of a good or service, such as only one employer hiring people’s labor in a company town. Like in monopoly, this phenomenon is not limited to when a firm is strictly the only buyer of labor. Today I will explain the circumstances and effects of employers having significant monopsony power over the market and over workers.

When employers have outsized power in employment relationships, they are able to set wages for their workers, rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers. This means paying them less than the value they contribute to production. One recent survey of all the economic research on monopsony finds that, on average across studies, employers have the power to keep wages over one-third less than they would be in a perfectly competitive market. Put another way, in a theoretical competitive market, if an employer cut wages then all workers would quit. But in reality, these estimates are the equivalent of a firm cutting wages by 5 percent yet only losing 10 percent to 20 percent of their workers, thus growing their profits without significantly impacting their business.

It is not only important for workers to earn a fair share so they can support themselves and their families, but also critical to ensure that our economy rebuilds to be stronger and more resilient. Prior to the current public health crisis and resulting recession, earnings inequality had been growing since at least the 1980s while the labor share of national income has been declining in same period. This is cause for concern as recent evidence suggests that the labor share of income has a positive impact on GDP growth in the long-run.

The unprecedented economic shock caused by the coronavirus pandemic revealed how economic inequality leads to a fragile economy, where those with the least are hit the hardest, amplifying recessions since lower-income workers typically spend more of their income in the economy. But the crisis also demonstrated how economic policy targeted toward workers and families can provide a foundation for growth. This is because workers are the economy, and pushing back against the concentration corporate power by providing resources to workers is the foundation for strong, stable and broadly shared growth.

The Causes of Monopsony

The concept of monopsony was initially developed by the early 20th century economist Joan Robinson, who examined how lack of competition led to unfair and inefficient economic outcomes. The prototypical example of monopsony is a company town, where there is one very dominant employer and workers have no choice but to accept low wages since they have no outside options. This is the most extreme case, but it is important to note that firms have monopsony power in any circumstance where workers aren’t moving between jobs seamlessly in search of the highest wages they can get.

Firms can use monopsony power to lower workers’ wages any time workers:

* Have few potential employers
* Face job mobility constraints
* Can only gather imperfect information about employers and jobs
* Have divergent preferences for job attributes
* Lack the ability to bargain over those offers

I will go through each of these factors in turn and demonstrate how labor markets are unique compared to other markets in dealing with competitive forces.

While concentrated labor markets are not the norm, they are pervasive across the United States, especially within certain sectors or locations. When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing that their workers have nowhere to go to find a better job with better pay. (See Figure 1.)

A study published in the journal Labour Economics by economists Jose Azar, Ioana Marinescu, and Marshall Steinbaum finds that 60 percent of U.S. local labor markets are highly concentrated as defined by U.S. antitrust authorities’ 2010 horizontal merger guidelines. This accounts for 20 percent of employment in the United States. Research by economists Gregor Schubert, Anna Stansbury, and Bledi Tsaka goes further by estimating workers’ outside options, or the likelihood a worker is able to change into a different occupation or industry. This study finds that even with a more expansive definition of job opportunities more than 10 percent of the U.S. workforce is in local labor markets where pay is being suppressed by employer concentration by at least 2 percent, and a significant proportion of these workers facing few outside options are facing pay suppression of 5 percent or more. As study co-author Anna Stansbury noted, “for a typical full-time workers making $50,000 a year, a 2 percent pay reduction is equivalent to losing $1,000 per year and a 5 percent pay reduction is equivalent to losing $2,500 per year.”

Certain sectors are now very concentrated, such as the healthcare industry. In a paper by the economists Elena Prager and Matt Schmitt, they find that hospital mergers led to negative wage growth among skilled workers such as nurses or pharmacy workers. Consolidation and outsized employer power, alongside other phenomenon such as the fissuring of the workplace, may have broader impacts on the structure of the U.S. labor market when it affects the overall structure of the labor market, including the hollowing out of middle class jobs that have historically been a pathway for upward mobility.

#### It’s the key internal link to growth---wage depression constrains worker supply, constrains output, and decreases investment.

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Intuitively, it seems likely that less expensive inputs or lower wages would mean savings for firms to pass on to the consumers. But it turns out that inefficiencies and lack of competition in upstream markets have ripple effects that can harm everyone. In a competitive market, employers pay the market wage; when there are vacancies, a marginal increase in pay will follow so employers can fill those vacancies. Labor monopsonists have different incentives. If they raise pay to fill a marginal vacancy, they might also have to raise pay for their existing employees. The small increase in pay needed to attract one more worker could mean a massive swing in overall labor cost (Krueger 2017). So even if growth would generally be good for the company, they might not be able to add the workers they need specifically because of the special dynamics of controlling too much of the market.

This is an extreme example, but the same general principle applies when employers have the market power to depress wages below competitive levels. When the marginal cost of filling vacancies and growing one’s business to efficient levels diverges from the firm’s individual incentives for doing so, firms are constricted and leave jobs unfilled. Constraining inputs like labor leads to constrained outputs, and if firms are producing less of the products that consumers want, then prices for those products go up. After all, supply constraints and price increases are two sides of the same coin, economically. Fewer workers ultimately means fewer goods, and fewer goods means higher prices for the limited amount of goods available.4 Over time, this problem is magnified because fewer workers are incentivized to enter the field at all. The supply of qualified workers will go down, further reducing the firm’s ultimate output below efficient levels. In the end, everyone suffers except the firm with market power, which captures outsized profits.

Think: Why does America have a chronic undersupply of nurses or teachers, as well as stagnant wages (Council of Economic Advisers 2016)? In a competitive market, undersupply would lead to higher wages and increased entry to the field. If wages are inefficiently underpriced, we end up without enough nurses and ballooning healthcare costs. (Not to mention that, in the case of nurses, we end up with worse health outcomes for consumers!) This is part of the reason it is so problematic to interpret the consumer welfare standard to mean that short-term consumer prices are increased: presumed price effects could be irrelevant or misleading as to the overall effect on consumers.

Antitrust enforcement is supposed to be dynamic and to be able to keep up with the state of economic theory.5 But this cross-pollination is not in evidence. For example, even though inefficiency anywhere in the supply chain leads to worse outcomes for consumers, product market cases outnumber labor market cases by a factor of nearly 15, and in mergers by closer to 35. Moreover, no recent merger has been blocked on the basis of labor market effects alone (Levi 1948, 540, fn10). A quick foray into how antitrust law has developed follows.

#### Slow growth collapses the liberal order AND causes global hotspot escalation---extinction.

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

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

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

Secular Stagnation

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

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

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

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

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

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

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

Illiberal Globalization

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

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

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19

Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

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

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

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war.

We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

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

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars.

In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

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

Multipolarity

We can define multipolarity as a wide distribution of power among multiple independent states. Exact equivalence of material power is not implied. What is required is the possession by several states of the capacity to coerce others to act in ways they would otherwise not, through kinetic or other means (economic sanctions, political manipulation, denial of access to essential resources, etc.). Such a distribution of power presents inherently graver challenges to peace and stability than do unipolar or bipolar power configurations,22 though of course none are safe or permanent. In brief, the greater the number of consequential actors, the greater the challenge of coordinating actions to avoid, manage, or de-escalate conflicts. Multipolarity also entails a greater potential for sudden changes in the balance of power, as one state may defect to another coalition or opt out, and as a result, the greater the degree of uncertainty experienced by all states, and the greater the plausibility of downside assumptions about the intentions and capabilities of one’s adversaries. This psychology, always present in international politics but particularly powerful in multipolarity, heightens the potential for escalation of minor conflicts, and of states launching preventive or preemptive wars. In multipolarity, states are always on edge, entertaining worst-case scenarios about actual and potential enemies, and acting on these fears—expanding their armies, introducing new weapon systems, altering doctrine to relax constraints on the use of force—in ways that reinforce the worst fears of others.

The risks inherent in multipolarity are heightened by the attendant weakening of global institutions. Even in a state-centric system, such institutions can facilitate communication and transparency, helping states to manage conflicts by reducing the potential for misperception and escalation toward war. But, as Waheguru Pal Singh Sidhu argues in his chapter on the United Nations, the influence of multilateral institutions as agent and actor is clearly in decline, a result of bottom-up populist/nationalist pressures experienced in many countries, as well as the coordination problems that increase in a system of multiple great powers. As conflict resolution institutions atrophy, great powers will find themselves in “security dilemmas”23 in which verification of a rival’s intentions is unavailable, and worst-case assumptions fill the gap created by uncertainty. And the supply of conflicts will expand as a result of growing nationalism and populism, which are premised on hostility, paranoia, and isolation, with governments seeking political legitimacy through external conflict, producing a siege mentality that deliberately cuts off communication with other states.

Finally, the transition from unipolarity (roughly 1989–2007) to multipolarity is unregulated and hazardous, as the existing superpower fears and resists challenges to its primacy from a rising power or powers, while the rising power entertains new ambitions as entitlements now within its reach. Such a “power transition” and its dangers were identified by Thucydides in explaining the Peloponnesian Wars,24 by Organski (the “rear-end collision”)25 during the Cold War, and recently repopularized and brought up to date by Graham Allison in predicting conflict between the US and China.26

A useful, and consequential illustration of the inherent challenge of conflict management during a power transition toward multipolarity, is the weakening of the arms control regime negotiated by the US and the Soviet Union during the Cold War. Despite the existential, global conflict between two nuclear armed superpowers embracing diametrically opposed world views and operating in economic isolation from each other, the two managed to avoid worst-case outcomes. They accomplished this in part by institutionalizing verifiable limits on testing and deployment of both strategic and intermediate-range nuclear missiles. Yet as diplomatically and technically challenging as these achievements were, the introduction of a third great power, China, into this twocountry calculus has proven to be a deal breaker. Unconstrained by these bilateral agreements, China has been free to build up its capability, and has taken full advantage in ramping up production and deployment of intermediate-range ground-launched cruise missiles, thus challenging the US ability to credibly guarantee the security of its allies in Asia, and greatly increasing the costs of maintaining its Asian regional hegemony. As a result, the Intermediate Nuclear Force treaty is effectively dead, and the New Start Treaty, covering strategic missiles, is due to expire next year, with no indication of any US–Russian consensus to extend it. The US has with logic indicated its interest in making these agreements trilateral; but China, with its growing power and ambition, has also logically rejected these overtures. Thus, all three great powers are entering a period of nuclear weapons competition unconstrained by the major Cold War arms control regimes. In a period of rapid advances in technology and worsening great power relations, the nuclear competition will be a defining characteristic of the next decade and beyond. This dynamic will also complicate nuclear nonproliferation efforts, as both the demand for nuclear weapons (a consequence of rising regional and global insecurity), and supply of nuclear materials and technology (a result of the weakening of the nonproliferation regime and deteriorating great power relations) will increase.

Will deterrence prevent war in a world of several nuclear weapons states, (the current nuclear powers plus South Korea, Iran, Saudi Arabia, Japan, Turkey), as it helped to do during the bipolar Cold War? Some neorealist observers view nuclear weapons proliferation as stabilizing, extending the balance of terror, and the imperative of restraint, to new nuclear weapons states with much to fight over (Saudi Arabia and Iran, for example).27 Others,28 examining issues of command and control of nuclear weapons deployment and use by newly acquiring states, asymmetries in doctrines, force structures, and capabilities between rivals, the perils of variable rates in transition to weapons deployment, problems of communication between states with deep mutual grievances, the heightened risk of transfer of such weapons to non-state actors, have grave doubts about the safety of a multipolar, nuclear-armed world.29 We can at least conclude that prudence dictates heightened efforts to slow the pace of proliferation, while realism requires that we face a proliferated future with eyes wide open.

The current distribution of power is not perfectly multipolar. The US still commands the world’s largest economy, and its military power is unrivaled by any state or combination of states. Its population is still growing, despite a recent decline in birth rates. It enjoys extraordinary geographic advantages over its rivals, who are distant and live in far worse neighborhoods. Its economy is less dependent on foreign markets or resources. Its political system has proven—up to now—to be resilient and adaptable. Its global alliance system greatly extends its capacity to defend itself and shape the world to its liking and is still intact, despite growing doubts about America’s reliability as a security guarantor. Based on these mostly material and historical criteria, continued American primacy would seem to be a good bet, if it chooses to use its power in this way.30

So why multipolarity? The clearest and most frequently cited evidence for a widening distribution of global power away from American unipolarity is the narrowing gap in GDP between the US and China. The IMF’s World Economic Outlook forecasts a $0.9 trillion increase in US GDP for 2019–2020, and a $1.3 trillion increase for China in the same period.31 Many who support the American primacy case argue that GDP is an imperfect measure of power, that Chinese GDP data is inflated, that its growth rates are in decline while Chinese debt is rapidly increasing, and that China does poorly on other factors that contribute to power—its low per capita GDP, its political succession challenges, its environmental crisis, its absence of any external alliance system. Yet GDP is a good place to start, as the single most useful measure and long-term predictor of power. It is from the overall economy that states extract and apply material power to leverage desired behavior from other states. It is true that robust future Chinese growth is not guaranteed, nor is its capacity to convert its wealth to power, which is a function of how well its political system works over time. But this is equally the case for the US, and considering recent political developments is not a given for either country.

As an alternative to measuring inputs—economic size, political legitimacy, technological innovation, population growth—in assessing relative power and the nature of global power distribution, we should consider outputs: what are states doing with their power? The input measures are useful, possibly predictive, but are usually deployed in the course of making a foreign policy argument, sometimes on behalf of a reassertion of American primacy, sometimes on behalf of retrenchment. As such, their objectivity (despite their generous deployment of “data”) is open to question. What is undeniable, to any clear-eyed observer, is a real decline in American influence in the world, and a rise in the influence of other powers, which predates the Trump administration but has accelerated into America’s free fall over the last four years. This has produced a de facto multipolarity, whether explainable in the various measures of power—actual and latent—or not. This decline results in part from policy mistakes: a reckless squandering of material power and legitimacy in Iraq, an overabundance of caution in Syria, and now pure impulsivity. But more fundamentally, it is a product of relative decline in American capacity—political and economic—to which American leadership is adjusting haphazardly, but in the direction of retrenchment/restraint. It is highly revealing that the last two American presidents, polar opposites in intellect, temperament and values, agreed on one fundamental point: the US is overextended, and needs to retrench. The fact that neither Obama nor Trump (up to this point in his presidency) believed they had the power at their disposal to do anything else, tells us far more about the future of American power and policy—and about the emerging shape of international relations—than the power measures and comparisons made by foreign policy advocates.

Observation of recent trends in US versus Russian relative influence prompts another question: do we understand the emerging characteristics of power? Rigorously measuring and comparing the wrong parameters will get us nowhere at best and mislead us into misguided policies at worst. How often have we heard, with puzzlement, that Putin punches far above his weight? Could it be that we misunderstand what constitutes “weight” in the contemporary and emerging world? Putin may be on a high wire, and bound to come crashing down; but the fact is that Russian influence, leveraging sophisticated communications/social media/influence operations, a strong military, an agile (Putin-dominated) decision process, and taking advantage of the egregious mistakes by the West, has been advancing for over a decade, shows no sign of slowing down, and has created additional opportunities for itself in the Middle East, Europe, Asia, Latin America, the Arctic. It has done this with an economy roughly the size of Italy’s. There are few signs of a domestic political challenge to Putin. His external opponents are in disarray, and Russia’s main adversary is politically disabled from confronting the problem. He has established Russia as the Middle East power broker. He has reached into the internal politics of his Western adversaries and influenced their leadership choices. He has invaded and absorbed the territory of neighboring states. His actions have produced deep divisions within NATO. Again, simple observation suggests multipolarity in fact, and a full explanation for this power shift awaiting future historians able to look with more objectivity at twenty-first-century elements of power.

When that history is written, surely it will emphasize the extraordinary polarization in American politics. Was multipolarity a case of others finding leverage in new sources of power, or the US underutilizing its own? The material measures suggest sufficient capacity for sustained American primacy, but with this latent capacity unavailable (as perceived, I believe correctly, by political leadership) by virtue of weakening institutions: two major parties in separate universes; a winnertake-all political mentality; deep polarization between the parties’ popular bases of support; divided government, with the Presidency and the Congress often in separate and antagonistic hands; diminishing trust in the permanent government, and in the knowledge it brings to important decisions, and deepening distrust between the intelligence community and policymakers; and, in Trump’s case, a chaotic policy process that lacks any strategic reference points, mis-communicates the Administration’s intentions, and has proven incapable of sustained, coherent diplomacy on behalf of any explicit and consistent set of policy goals.

Rising Nationalism/Populism/Authoritarianism

The evidence for these trends is clear. Freedom House, the go-to authority on the state of global democracy, just published its annual assessment for 2020, and recorded the fourteenth consecutive year of global democratic decline and advancing authoritarianism. This dramatic deterioration includes both a weakening in democratic practice within states still deemed on balance democratic, and a shift from weak democracies to authoritarianism in others. Commitment to democratic norms and practices—freedom of speech and of the press, independent judiciaries, protection of minority rights—is in decline. The decline is evident across the global system and encompasses all major powers, from India and China, to Europe, to the US. Right-wing populist parties have assumed power, or constitute a politically significant minority, in a lengthening list of democratic states, including both new (Hungary, Poland) and established (India, the US, the UK) democracies. Nationalism, frequently dismissed by liberal globalization advocates as a weak force when confronted by market democracies’ presumed inherent superiority, has experienced a resurgence in Russia, China, the Middle East, and at home. Given the breadth and depth of right-wing populism, the raw power that promotes it—mainly Russian and American—and the disarray of its liberal opponents, this factor will weigh heavily on the future.

The major factors contributing to right-wing populism and its global spread is the subject of much discussion.32 The most straightforward explanation is rising inequality and diminished intergenerational mobility, particularly in developed countries whose labor-intensive manufacturing has been hit hardest by the globalization of capital combined with the immobility of labor. Jobs, wages, economic security, a reasonable hope that one’s offspring has a shot at a better life than one’s own, the erosion of social capital within economically marginalized communities, government failure to provide a decent safety net and job retraining for those battered by globalization: all have contributed to a sense of desperation and raw anger in the hollowed-out communities of formerly prosperous industrial areas. The declining life expectancy numbers33 tell a story of immiseration: drug addition, suicide, poor health care, and gun violence. The political expression of such conditions of life should not be surprising. Simple, extremist “solutions” become irresistible. Sectarian, racial, regional divides are strengthened, and exclusive identities are sharpened. Political entrepreneurs offering to blow up the system blamed for such conditions become credible. Those who are perceived as having benefited from the corrupt system—long-standing institutions of government, foreign countries and populations, immigrants, minorities getting a “free ride,” elites—become targets of recrimination and violence. The simple solutions of course, don’t work, deepening the underlying crisis, but in the process politics is poisoned. If this sounds like the US, it should, but it also describes major European countries (the UK, France, Italy, Germany, Poland, Hungary, the Czech Republic), and could be an indication of things to come for non-Western democracies like India.

We have emphasized throughout this chapter the interaction of four structural forces in shaping the future, and this interaction is evident here as well. Is it merely coincidence that the period of democratic decline documented by Freedom House, coincides precisely with the global financial and economic crisis? Lower growth, increasing joblessness, wage stagnation, superimposed on longer-term widening of inequality and declining mobility, constitute a forbidding stress test for democratic systems, and many continue to fail. And if we are correct about secular stagnation, the stress will continue, and authoritarianism’s fourteen-year run will not be over for some time. The antidemocratic trend will gain additional impetus from the illiberal direction of globalization, with its growth suppressing protectionism, weaponization of global economic exchange, and weakening global economic institutions. Multipolarity also contributes, in several ways. The former hegemon and author of globalization’s liberal structure has lost its appetite, and arguably its capacity, for leadership, and indeed has become part of the problem, succumbing to and promoting the global right-wing populist surge. It is suffering an unprecedented decline in life expectancy, and recently a decline in the birth rate, signaling a degree of rot commonly associated with a collapsing Soviet Union. While American politics may once again cohere around its liberal values and interests, the time when American leadership had the self-confidence to shape the global system in its liberal image is gone. It may build coalitions of the like-minded to launch liberal projects, but there will be too much power outside these coalitions to permit liberal globalization of the sort imagined at the end of the Cold War. In multipolarity, the values around which global politics revolve will reflect the diversity of major powers, their interests, and the norms they embrace. Convergence of norms, practices, policies is out of the question. Global collective action, even in the face of global crises, will be a long shot. To expect anything else is fantasy

Unbrave New World and Future Challenges

At the outset of this chapter we described these structural forces as interacting to produce more conflict and diminished prosperity. We also predicted a world with shrinking collective capacity to address new challenges as they arise. What specifically will such a world look like? We address below three principal challenges to global problem solving over the next decade.

Interstate Conflict

In the world experienced by most readers of this volume, conflict is observed within weak states, sometimes promoted by regional competitors, by terrorist groups, or by great powers, acting through surrogates or by indirect means. Sometimes, as in Syria, this conflict spills over to contiguous states and contributes to regional instability, and challenges other regions to respond effectively, a challenge that Europe has not met. Much of this will continue, but the global significance of such local conflicts will be greatly magnified by increasing great power conflict, which will feed—rather than manage or resolve—local instabilities and will in turn be exacerbated by them. Great powers will jockey for advantage, support their local partners, escalate preemptively. Conflicts initially confined to failing states or unstable regions will be redefined by great powers as global in scope and significance.

This tendency of states to view local conflicts in the context of a zero-sum, global struggle for power is familiar to students of the Cold War, but now with the additional challenges to collective action, expanded uncertainty and worst-case thinking associated with the power transition to multipolarity. We can easily observe increased conflict in US–China relations, as we will in US–Russia relations as future US administrations try to make up for ground lost during the Trump presidency, especially in the Middle East. We can observe it among powerful states with mutual historical grievances, now with a weakening presence of the hegemonic security guarantor and having to consider the renationalization of their defense: Japan-South Korea, Germany-France. We can observe it among historical rivals operating in rapidly changing security landscapes: India-China. We can observe it within the Middle East, as internal rivalries are appropriated by regional powers in a contest for regional dominance. We can observe it clearly in Syria, where the regime’s violent suppression of Arab Spring resistance led to all-out civil war, attracted outside support to proxy forces by aspiring regional hegemons Saudi Arabia and Iran, enabled the rise of ISIS, and eventually to great power intervention, principally by Russia. In a world of effective great power collaboration or American primacy, the Syrian civil war might have been settled through power sharing or partition, or if not, contained within Syria. The collapse of Yugoslavia, occurring during a period of US “unipolarity” and managed effectively, demonstrates the possibilities. Instead, with the US retrenching, Middle East rivals unconstrained by great powers, and great power competition rising, the Syria civil war was fed by outside powers, then metastasized into the region, and—in the form of refugee flows—into Europe, fundamentally altering European politics. Libya may be at the early stages of this scenario.

This is not the end of the Syria story. Russia has established itself as a major player in Syria and the Middle East’s power broker, the indispensable country with leverage throughout the region. China is poised to reap the financial and power benefits of Syrian reconstruction. The US has just demonstrated, in its act of war against the Iranian regime, its willingness, without consultation, to put its allies’ security in further jeopardy, accentuating the risks of security ties with Washington and generating added opportunities for Russia and China. The purpose here is not to critique US policy, but to point out the dramatically shifting power balance in a critical region, toward multipolarity. The dangers of such a shift will become apparent as some future US president attempts to reassert US influence in the region and finds a crowded playing field.

Can a multipolar distribution of power among several states whose interests, values, and political practices are divergent, all experiencing bottom-up nationalist pressures, all seeking advantages in the oversupply of regional instability, be made to work? I think not. Will this more dangerous world descend into direct military confrontation between great powers, and could such confrontation lead to use of nuclear weapons? Here the question becomes, what will this more dangerous world actually look like; what instruments of coercion will be available to states as technology change accelerates; how will states employ these instruments; how will deterrence work (if at all) among several states with large but unequal levels of destructive capacity, weak command, and control, disparate— or opaque—strategies and simmering rivalries; can conflict management work in a world of weak institutions? The collapse of the Cold War era nuclear arms control regime, the threat to the Non-Proliferation Treaty represented by the demise of the JCPOA, and multiple indications of an accelerating nuclear arms race among the three principle powers, augurs badly. Given the structural forces at play, and without predicting the worst, we are indeed entering perilous times.

Global Poverty and Inequality

Despite the challenges of volatility and disruptive change inherent in globalization, the world under American liberal leadership has managed a dramatic reduction of extreme poverty. According to World Bank estimates, in 2015, 10 percent of the world’s population lived on less than $1.90 a day, down from nearly 36 percent in 1990.34 In fact, as of September 2018, half the world is now middle class or wealthier.35 The uneven success of the UN Millennium Development Goals (MDGs) exemplifies this achievement, and demonstrates what is possible when open markets are managed through strong global institutions, effective leadership and interstate collaboration. What this liberal hegemonic system did not achieve, however, was a fair distribution of the gains from globalization within states, and among those states that for various reasons were not full participants in this system.

This record of partial achievement leaves us with a full agenda for the next fifteen years, but without the hegemonic leadership, strong institutions, ascendant liberalism or robust global growth that enabled previous gains. There are powerful reasons to question the sustainability of these poverty reduction gains, leading to doubts about the realization of the Sustainable Development Goals, which have replaced the MDGs as global development targets.36 (See Jens Rudbeck’s chapter and Sidhu’s UN chapter for SDGs). Skeptics have pointed to slowing global growth, specifically in China, whose demand for imported commodities was a major factor in developing country growth and job creation; growing protectionism in developed country markets, fueled by bottom-up forces of nationalism, and from top-down by a weakened global trading regime and increased geopolitical rivalry; the effects of accelerating climate change on agriculture, migration and communal conflict in poor countries; and the growth burst among poor countries from the rapid transition to more efficient use of resources, a transition that is now slowing down.37

Perhaps the greatest concern in this scenario is a general deterioration in the developing country foreign investment climate. Foreign direct investment (FDI) has been a major contributor to growth, job creation, and poverty alleviation among poor countries. It has incentivized growthfriendly policies, reduced corruption, introduced technology and effective management practices, and linked poor countries to foreign markets through global supply chains.38 It has stimulated growth of indigenous manufacturing and service companies to supply new foreign investments.

It has been the major cause of economic convergence between rich and poor countries. From 2000 to 2009, developing economies’ growth rates were more than four percentage points higher than those of rich countries, pushing their share of global output from just over a third to nearly half.39 However, FDI flows into poor countries are imperiled by the structural forces discussed here. Political instability arising from slower growth and environmental stress will increase investors’ perception of higher risk, reinforcing their developed country bias. Protectionism among developed countries will threaten the global market access upon which manufacturing investment in developing countries is premised, causing firms to pare back their global supply chains. As companies retrench from direct investment in poor countries, the appeal to those countries of Chinese debt financed infrastructure projects, under the Belt-Road Initiative with little or no conditionality, but at the risk of “debt traps,” will increase.

Global Warming

The question posed at the beginning of this section is whether the international system, evolving toward multipolarity and rising nationalism, will find the collective political capital to confront challenges as they arise. Global warming is the mother of all challenges, and the weakness in the system’s capacity to respond is clear. With the two major political/economic powers and greenhouse gas emitters locked in deepening geopolitical conflict (and with one of them locked in climate change denial, possibly through 2024), the chances of significantly slowing global warming or even ameliorating its effects are very slim. We are reduced to the default option, nation-specific adaptation to climate change, which will impose rising human, political and economic costs on all, and will widen the gap between rich countries with adaptive capacity (of varying degrees), and the poor, who will suffer deteriorating economic, political, and social conditions. (For a contrary, optimistic view see Michael Shank’s chapter, which credits new actors—like cities—as playing a more constructive role in climate mitigation.) This would bring to a close liberal globalization’s greatest achievement; the raising of 1.1 billion people out of extreme poverty since 1990,40 with all its associated gains in quality of life (in the WHO Africa region, for example, life expectancy rose by 10.3 years between 2000 and 2016, driven mainly by improvements in child survival and expanded access to antiretrovirals for treatment of HIV).41

Several forces are at work here. The problem itself is graver—in magnitude and in rate of worsening—than predicted by climate scientists. The UN Intergovernmental Panel on Climate Change (IPCC), the major source of information on global warming, has consistently underpredicted the rate of climate deterioration. This holds true even for its “worst-case scenarios,” meaning that what was meant as a wake-up call has in fact reinforced complacency.42 (see Michael Shank’s chapter for further discussion of climate change). The IPCC, in its 2019 report, has tried to undo the damage by emphasizing the acceleration in the rate of warming and its effects, the only partially understood dynamic of climate change, and—given wide uncertainty—the possibility of unpleasant surprises yet to come. This strengthens the scientific case for urgency—to both severely limit greenhouse gas emissions, and to increase investment in ameliorating the effects.

Unfortunately, the crisis comes at a moment when the climate for collective action is ice cold. Geopolitical competition incentivizes states to out produce each other, regardless of the environmental effects. Multipolarity complicates collective action. Economic stagnation mandates job creation, making regulation politically toxic. Bottom-up nationalism/populism causes states to pursue “relative gains,” meaning that if the nation is seen as gaining in a no-holds-barred economic competition with others, the negative environmental effects can be tolerated. A post-Trump presidency would help, with the US rejoining the Paris Agreement, and lending its weight to tighter regulation, increased R and D, and stronger economic incentives to reduce carbon emissions. Keep in mind, however, that President Obama was fully behind such efforts, but in a deeply polarized America was unable to implement measures needed to fulfill the Paris obligations through legislation, and his executive orders to do this were swiftly overturned by Trump.

Conclusion

It may be tempting to hope that post-Trump, the US can regain its global leadership and exert its considerable power in a liberal direction, but with enough self-awareness of its relative decline to share responsibility with others. This was, I believe, the broad direction of the Obama strategy, evidenced by the JCPOA and the Trans-Pacific Partnership: liberal, collective solutions to global problems, as US dominance receded.

This would constitute an optimistic scenario, and it confronts two major problems: can US internal politics support it (can, for example, the country legislate controls on carbon, essential for the global credibility and durability of such commitments); and is the world ready to reengage with American leadership, given the damage to its reputation and the structural forces discussed in this chapter?

My educated guess is no, on both counts. The rot within is extensive, the concrete evidence clear in the economic inequality/immobility numbers, the life expectancy numbers, the deep political polarization, between the two major parties, between regions, between cities and rural areas. We are in fact a long way from fitness for global leadership, and the recognition of this by others will accelerate the decline of American influence. The rest of the world is well on its way toward adjusting to post-American hegemony, some by renationalizing their defense, or by cutting deals with adversaries, by building new alliances or by seizing new opportunities for influence in the vacuum left by American retrenchment. The evidence for this will accumulate. Observe the current and emerging Middle East, where all these post-hegemonic strategies are visible.

#### Decline overcomes traditional barriers to conflict.

Jomo Kwame Sundaram & Vladimir Popov 19. Former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007. Former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin “Economic Crisis Can Trigger World War.” <http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/>.

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, there are growing concerns about the increased possibility of large-scale military conflict.

More worryingly, in the current political landscape, prolonged economic crisis, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could easily spin out of control and ‘morph’ into military conflict, and worse, world war.

Crisis responses limited

The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates.

But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms.

Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy.

From bust to bubble

Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression.

As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy.

The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to foment unrest, conflict, even war as it is blamed on the foreign.

International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition!

Liberalization’s discontents

Rising economic insecurity, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and increase social tensions and turmoil, especially among the growing precariat and others who feel vulnerable or threatened.

Thus, ethno-populist inspired chauvinistic nationalism may exacerbate tensions, leading to conflicts and tensions among countries, as in the 1930s. Opportunistic leaders have been blaming such misfortunes on outsiders and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization.

Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality.

To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries.

Insecurity, populism, conflict

Thomas Piketty has argued that a sudden increase in income inequality is often followed by a great crisis. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern.

Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could inadvertently catalyse future crises and conflicts.

Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse.

At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies.

Avoiding Thucydides’ iceberg

Thus, protracted economic distress, economic conflicts or another financial crisis could lead to military confrontation by the protagonists, even if unintended. Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers.

They patently ignored Thucydides’ warning, in chronicling the Peloponnesian wars over two millennia before, when the rise of Athens threatened the established dominance of Sparta!

Anticipating and addressing such possibilities may well serve to help avoid otherwise imminent disasters by undertaking pre-emptive collective action, as difficult as that may be.

### FTC---1AC

#### Advantage 2 is FTC Credibility.

#### FTC promised labor protection now---they’ll lose now but the plan makes them win.

Nicolás Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress.

Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.)

Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy.

Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image.

How the FTC can tackle antitrust

To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices.

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### Chair Khan is advocating for the AFF but constrained by the existing body of antitrust law---only adopting a new standard solves.

Tara L. Reinhart et al 21. \*Tara Reinhart is head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office. She focuses on civil litigation and government investigations, with an emphasis on complex antitrust litigation and international cartel probes. \*Steven C. Sunshine is the head of Skadden’s Global Antitrust/Competition Group. He represents clients in connection with antitrust aspects of mergers and acquisitions, litigation, counseling and grand jury investigations. \*David Wales is recognized as a leading antitrust lawyer and has over 25 years of experience in both private and public sectors. His practice focuses on providing antitrust advice to U.S. and international clients in a wide range of industries on all aspects of antitrust, including mergers and acquisitions, alliances, criminal grand jury investigations, dominant firm conduct, distribution arrangements, licensing and competitor collaborations. \*Julia York has represented numerous global corporations in various industries, including pharmaceuticals, telecommunications, energy and financial markets, in both litigation and transactional matters. “FTC Chair Khan Highlights Key Policy Priorities Going Forward, but Aggressive Agenda Faces Uphill Climb” Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates. 10-04-21. <https://www.skadden.com/insights/publications/2021/10/ftc-chair-khan-highlights-policy-priorities>

In a September 22, 2021, memorandum to staff, Federal Trade Commission (FTC) Chair Lina Khan formally laid out her “Vision and Priorities for the FTC,” reaffirming her calls for broad antitrust enforcement organized around three key policy priorities: merger enforcement, dominant intermediaries and restrictive contract terms. The memo further describes her vision for the agency’s strategic approach and operational objectives to support those priorities. Like her prior calls for antitrust reform and aggressive enforcement,1 the policy priorities outlined by Chair Khan are somewhat abstract and do not specify concrete actions the agency will take to achieve them. However, a close review of these high-level priorities, approach and objectives reveals some **practical obstacles to implementation**, including limitations **imposed by resource constraints and the existing body of antitrust law.** Policy Priorities: Merger Enforcement, Dominant Intermediaries and Restrictive Contract Terms Chair Khan listed three policy priorities for the agency going forward. First, she identified a need to strengthen the agency’s merger enforcement work to combat what she described as rampant consolidation and the market dominance she believes that consolidation has enabled. In particular, she expressed a concern that markets “will only become more consolidated” absent FTC vigilance and assertive action. She noted that revising the merger guidelines will be important to achieve merger reform, characterizing prior iterations of the guidelines as a “somewhat narrow and outdated framework for assessing mergers.” She also highlighted a need to find ways to deter unlawful transactions, including “facially illegal deals.” Second, Ms. Khan indicated her desire to focus enforcement on “dominant intermediaries and extractive business models.” After suggesting that market power is an increasingly systemic problem in the economy, and that the FTC should devote resources to regulating the most significant actors — with “next-generation technologies, innovations, and nascent industries” requiring particular vigilance, she focused specifically on the market position of “gatekeeper” companies and “dominant middlemen.” Such entities, according to Chair Khan, have been able to “hike fees, dictate terms, and protect and extend their market power.” She also posited that the involvement of private equity and other investment vehicles may strip such businesses of productive capacity and harm consumers. In discussing the agency’s strategic approach to address these issues, Chair Khan noted her intention to “focus[] on structural incentives that enable unlawful conduct,” and to “look[] upstream at the firms that are enabling and profiting from this conduct.” Third, Ms. Khan discussed certain contract terms, including **noncompete provisions**, repair restrictions and exclusionary clauses, that she believes could constitute unfair methods of competition or unfair or deceptive trade practices. She also **advocated for a “holistic” approach to identifying harms to account for effects on workers** and independent businesses. Describing this holistic approach in broad terms, she indicated that the agency would **focus on “power asymmetries** and the unlawful practices those imbalances enable,” and the effects such conduct has, for example, on **marginalized communities**. In sharing her hopes to “further democratize the agency,” Chair Khan similarly expressed that the FTC’s work should help “shape[] the **distribution of power and opportunity** across our economy.” More generally, the memo identifies areas of investment for the agency to help achieve these priorities. This includes incorporating a greater range of analytical tools and skillsets into the agency’s work, and expanding the agency’s regional footprint to grow its ranks, including by hiring additional technologists, data analysts, financial analysts and experts from outside disciplines. Chair Khan also announced that she will name Holly Vedova and Samuel Levine, both career FTC staff (as opposed to political appointees), as the director of the Bureau of Competition and the director of the Bureau of Consumer Protection, respectively. Practical Limitations on Implementation of Chair Khan’s Policy Priorities Chair Khan describes the antitrust agenda outlined in her memorandum as “robust,” and the memo communicates her intention to attempt to reshape antitrust policy and enforcement. However, a revolutionary shift in antitrust enforcement by the FTC will **face substantial practical challenges.** Most significantly, the path to reshaping antitrust enforcement will be constrained by the substantial body of existing antitrust law and the need to convince a federal judge that the **conduct in question is unlawful**. Chair Khan’s memo generally advocates for a new, more expansive and holistic approach to identifying antitrust harms **beyond the traditional focus on consumer welfare** and price effects. However, **courts have — and will likely continue to — rely on existing standards developed** in the case law over many decades. Those standards focus on consumer welfare and predominantly price effects. **Absent legislative change**, then, a **practical gap** will persist between Chair Khan’s **vision of refocused and more assertive antitrust enforcement**, on the one hand, and **the law that would apply** to any FTC enforcement action, on the other.2

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

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

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

#### Trust solves scams and privacy violation---it’s a prerequisite to all reforms.

Testimony of Ted Mermin 21. Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law. Before the United States House of Representatives Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers”. https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf

10. Trust the FTC. This final step informs all the others. There can be no doubt that there is more work to do protecting consumers than the FTC currently has the tools or resources to accomplish. There is also no doubt that the FTC has been trammeled in ways that its sister agencies, federal and state, have not. Whatever the reason, it is high time to retire the “zombie ideas” about the FTC – that the Commission is unnecessary, or overreaching, or heavy-handed, or inefficient.23 It is time, as one commissioner stated in Senate testimony last week, to “turn the page on the FTC’s perceived powerlessness.”24

For an American public eager for greater – not lesser – protection from increasingly sophisticated scam artists, deceptive advertisers, and privacy violating tech companies, building an effective FTC is an easy decision. It can and should be for this committee as well.

IV. Conclusion

This subcommittee meets at a remarkable historical moment, when the COVID-19 pandemic has revealed the profound need for a robust Federal Trade Commission just days after the Supreme Court made action by Congress an absolute necessity. This is a perilous time, with the chief protector of American consumers rendered nearly powerless just when those consumers are experiencing a heightened threat resulting from a once-in-a-century pandemic. The Consumer Protection and Recovery Act provides a critical first step toward restoring authority and effectiveness to the nation’s leading consumer protection agency.

Swift action to restore the FTC’s traditional 13(b) authority means that when constituents contact your office, and tell your staff that they have lost their life’s savings to a work-at-home scam, or their identity has been stolen and someone has opened accounts in their name, or they just spent their stimulus payment on a supposed cure for COVID for their grandmother who’s on a respirator – there will still be an agency to refer them to. No one wants that staffer to have to add: “Well, we could send you to the FTC, but they don’t actually have the power to get you your money back.”

Inaction or delay will mean no recovery for millions of wronged American consumers. The time to pass the Consumer Protection and Recovery Act is now.

#### Scamming causes extinction.

Casey Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

Beginning in the spring of 2018, scammers began to impersonate noted cryptocurrency enthusiast Elon Musk. They would use his profile photo, select a user name similar to his, and tweet out an offer that was effective despite being too good to be true: send him a little cryptocurrency, and he’ll send you a lot back. Sometimes the scammer would reply to a connected, verified account — Musk-owned SpaceX, for example — giving it additional legitimacy. Scammers would also amplify the fake tweet via bot networks, for the same purpose.

The events of 2018 showed us three things. One, at least some people fell for the scam, every single time — certainly enough to incentivize further attempts. Two, Twitter was slow to respond to the threat, which persisted well beyond the company’s initial comments that it was taking the issue seriously. And three, the demand from scammers coupled with Twitter’s initial measures to fight back set up a cat-and-mouse game that incentivized bad actors to take more drastic measures to wreak havoc.

That brings us to today. The story picks up with Nick Statt in The Verge:

The Twitter accounts of major companies and individuals have been compromised in one of the most widespread and confounding hacks the platform has ever seen, all in service of promoting a bitcoin scam that appears to be earning its creator quite a bit of money.

We don’t know how it’s happened or even to what extent Twitter’s own systems may have been compromised. The hack appears to have subsided, but new scam tweets were posting to verified accounts on a regular basis starting shortly after 4PM ET and lasting more than two hours. Twitter acknowledged the situation after more than an hour of silence, writing on its support account at 5:45PM ET, “We are aware of a security incident impacting accounts on Twitter. We are investigating and taking steps to fix it. We will update everyone shortly.”

Among the hacked accounts were President Barack Obama, Joe Biden, Amazon CEO Jeff Bezos, Bill Gates, the Apple and Uber corporate accounts, and pop star Kanye West.

But they came later. The first prominent individual account to be compromised? Elon Musk, of course.

Within the first hours of the attack, people were duped into sending more than $118,000 to the hackers. It also seems possible that a great number of sensitive direct messages could have been accessed by the attackers. Of even greater concern, though, is the speed and scale at which the attack unfolded — and the national security concerns it raises, which are profound.

The first and most obvious question is, of course, who did this and how? And at press time, we don’t know. At Vice, Joseph Cox, one of the best security reporters I know, reported that members of the underground hacking community are sharing screenshots suggesting someone gained access to an internal Twitter tool used for account management. Cox writes:

Two sources close to or inside the underground hacking community provided Motherboard with screenshots of an internal panel they claim is used by Twitter workers to interact with user accounts. One source said the Twitter panel was also used to change ownership of some so-called OG accounts—accounts that have a handle consisting of only one or two characters—as well as facilitating the tweeting of the cryptocurrency scams from the high profile accounts.

Twitter has been deleting screenshots of the panel and has suspended users who have tweeted the screenshots, claiming that the tweets violate its rules.

To speculate much further would be irresponsible, but Cox’s reporting suggests that this is not a garden-variety hack in which a bunch of people reused their passwords, or a hacker used social engineering to convince AT&T to swap a SIM card. One possibility is that hackers accessed internal Twitter tools; another that Cox raises is that a Twitter employee was involved in the incident — which, if true, would make this the second inside job revealed at Twitter this year.

In any case, Twitter’s response to the incident offered further cause for distress. The company’s initial tweet on the subject said almost nothing, and two hours later it had followed only to say what many users were forced to discover for themselves: that Twitter had disabled the ability of many verified users to tweet or reset their passwords while it worked to resolve the hack’s underlying cause.

The near-silencing of politicians, celebrities, and the national press corps led to much merriment on the service — see this, along with Those good tweets below, for some fun — but the move had other, darker implications. Twitter is, for better and worse, one of the world’s most important communications systems, and among its users are accounts linked to emergency medical services. The National Weather Service in Lincoln, IL, for example, had just tweeted a tornado warning before suddenly going dark. To the extent that anyone was relying on that account for further information about those tornadoes, they were out of luck.

Of course, Twitter’s move to stop verified accounts from tweeting represents a difficult balancing on equities. You would probably rather the National Weather Service not tweet than a hacker sell the account to a bad actor who logs in and falsely suggests that tornadoes are sweeping through every city in America. But the ham-fisted approach to resolving the issue — banning a huge portion of 359,000 verified accounts — reflects the staggering scale of the breach. This is as close to pulling the plug on Twitter as Twitter itself has ever come.

And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.)

It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it:

“I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.”

And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further.

Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again.

After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

#### AND fraud funds terrorists.

Frank S. Perri 10. Frank S. Perri, J.D., CFE, CPA. "The Fraud-Terror Link:". No Publication. 2010. https://www.fraud-magazine.com/article.aspx?id=4294967888

The threat of terrorism has become the principal security concern in the United States since 9/11. Some might perceive that fraud isn’t linked to terrorism because white-collar crime issues are more the province of organized crime, but that perception is misguided. Terrorists derive funding from a variety of criminal activities ranging in scale and sophistication – from low-level crime to organized narcotics smuggling and fraud. CFEs need to know the latest links between fraud and terror.

Credit card fraud, wire fraud, mortgage fraud, charitable donation fraud, insurance fraud, identity theft, money laundering, immigration fraud, and tax evasion are just some of the types of fraud commonly used to fund terrorist cells. Such groups will also use shell companies to receive and distribute illicit funds. On the surface, these companies might engage in legitimate activities to establish a positive reputation in the business community.

Financing is required not just to fund specific terrorist operations but to meet the broader organizational costs of developing and maintaining a terrorist organization and to create an enabling environment necessary to sustain their activities. The direct costs of mounting individual attacks have been relatively low considering the damage they can yield.

“Part of the problem is that it takes so little to finance an operation,” said Gary LaFree, director of the University of Maryland’s National Consortium for the Study of Terrorism and Responses to Terrorism.2 For example, the 2005 London bombings cost about $15,600.3 The 2000 bombing of the USS Cole is estimated to have cost between $5,000 and $10,000.4 Al-Qaida’s entire 9/11 operation cost between $400,000 and $500,000, according to the final report of the National Commission on Terrorist Attacks Upon the United States.5

Terrorist groups require significant funds to create and maintain an infrastructure of organizational support, sustain an ideology of terrorism through propaganda, and finance the ostensibly legitimate activities needed to provide a veil of legitimacy for their shell companies.6 However, don’t think that only large operations are needed for terrorists to carry out attacks; small semi-autonomous cells in many countries are often just as capable of conducting disruptive activities without extensive outside financial help – they just conduct smaller-scale frauds.7

Even though the nexus between fraud and terrorism is undisputed, there’s concern at state and local levels that law enforcement professionals lack specialized knowledge on how to detect the fraud-terror link because they’re more apt to investigate and prosecute violent crimes.8

A critical lack of awareness about terrorists’ links to fraud schemes is undermining the fight against terrorism. Fraud analysis must be central, not peripheral, in understanding the patterns of terrorist behavior.9

#### Nuke terror is likely and causes retal---global war.

Irma Arguello & Emiliano J. Buis 18. \*Founder and chair of the NPSGlobal Foundation, and head of the secretariat of the Latin American and Caribbean Leadership Network. \*Researcher and professor at the NPSGlobal Foundation. “The Global Impacts of a Terrorist Nuclear Attack: What Would Happen? What Should We Do?,” Bulletin of the Atomic Scientists. vol. 74. no. 2. Routledge. 03-04-2018. pp. 114–119.

Making matters worse, there is evidence of an illicit market for nuclear weapons-usable materials. There are sellers in search of potential buyers, as shown by the dismantlement of a nuclear smuggling network in Moldova in 2015. There certainly are plenty of sites from which to obtain nuclear material. According to the 2016 Nuclear Security Index by the Nuclear Threat Initiative, 24 countries still host inventories of nuclear weapons-usable materials, stored in facilities with different degrees of security.

And in terms of risk, it is not necessary for a given country to possess nuclear weapons, weapons-usable materials, or nuclear facilities for it to be useful to nuclear terrorists: Structural and institutional weaknesses in a country may make it favorable for the illicit trade of materials. Permeable boundaries, high levels of corruption, weaknesses in judicial systems, and consequent impunity may give rise to a series of transactions and other events, which could end in a nuclear attack. The truth is that, at this stage, no country in possession of nuclear weapons or weapons-usable materials can guarantee their full protection against nuclear terrorism or nuclear smuggling.

Because we live in a world of growing insecurity, where explicit and tacit agreements between the relevant powers – which upheld global stability during the post- Cold War – are giving way to increasing mistrust and hostility, a question arises: How would our lives be affected if a current terrorist group such as the Islamic State (ISIS), or new terrorist groups in the future, succeed in evolving from today’s Manchester style “low-tech” attacks to a “high-tech” one, involving a nuclear bomb, detonated in a capital city, anywhere in the world?

We attempted to answer this question in a report developed by a high-level multidisciplinary expert group convened by the NPSGlobal Foundation for the Latin American and Caribbean Leadership Network. We found that there would be multiple harmful effects that would spread promptly around the globe (Arguello and Buis 2016); a more detailed analysis is below, which highlights the need for the creation of a comprehensive nuclear security system.

The consequences of a terrorist nuclear attack

A small and primitive 1-kiloton fission bomb (with a yield of about one-fifteenth of the one dropped on Hiroshima, and certainly much less sophisticated; cf. Figure 1), detonated in any large capital city of the developed world, would cause an unprecedented catastrophic scenario.

An estimate of direct effects in the attack’s location includes a death toll of 7,300-to-23,000 people and 12,600-to-57,000 people injured, depending on the target’s geography and population density. Total physical destruction of the city’s infrastructure, due to the blast (shock wave) and thermal radiation, would cover a radius of about 500 meters from the point of detonation (also known as ground zero), while ionizing radiation greater than 5 Sieverts – compatible with the deadly acute radiation syndrome – would expand within an 850-meter radius. From the environmental point of view, such an area would be unusable for years. In addition, radioactive fallout would expand in an area of about 300 square kilometers, depending on meteorological conditions (cf. Figure 2).

But the consequences would go far beyond the effects in the target country, however, and promptly propagate worldwide. Global and national security, economy and finance, international governance and its framework, national political systems, and the behavior of governments and individuals would all be put under severe trial. The severity of the effects at a national level, however, would depend on the countries’ level of development, geopolitical location, and resilience.

Global security and regional/national defense schemes would be strongly affected. An increase in global distrust [[FIGURE 3 OMITTED]] would spark rising tensions among countries and blocs, that could even lead to the brink of nuclear weapons use by states (if, for instance, a sponsor country is identified). The consequences of such a shocking scenario would include a decrease in states’ self-control, an escalation of present conflicts and the emergence of new ones, accompanied by an increase in military unilateralism and military expenditures.

Regarding the economic and financial impacts, a severe global economic depression would rise from the attack, likely lasting for years. Its duration would be strongly dependent on the course of the crisis. The main results of such a crisis would include a 2 percent fall of growth in global Gross Domestic Product, and a 4 percent decline of international trade in the two years following the attack (cf. Figure 3). In the case of developing and less-developed countries, the economic impacts would also include a shortage of high-technology products such as medicines, as well as a fall in foreign direct investment and a severe decline of international humanitarian aid toward low-income countries. We expect an increase of unemployment and poverty in all countries. Global poverty would raise about 4 percent after the attack, which implies that at least 30 million more people would be living in extreme poverty, in addition to the current estimated 767 million.

In the area of international relations, we would expect a breakdown of key doctrines involving politics, security, and relations among states. These international tensions could lead to a collapse of the nuclear order as we know it today, with a consequent setback of nuclear disarmament and nonproliferation commitments. In other words, the whole system based on the Nuclear Non- Proliferation Treaty would be put under severe trial. After the attack, there would be a reassessment of existing security doctrines, and a deep review of concepts such as nuclear deterrence, no-firstuse, proportionality, and negative security assurances.

Finally, the behavior of governments and individuals would also change radically. Internal chaos fueled by the media and social networks would threaten governance at all levels, with greater impact on those countries with weak institutional frameworks. Social turbulence would emerge in most countries, with consequent attempts by governments to impose restrictions on personal freedoms to preserve order – possibly by declaring a state of siege or state of emergency – and legislation would surely become tougher on human rights. There would also be a significant increase in social fragmentation – with a deepening of antagonistic views, mistrust, and intolerance, both within countries and towards others – and a resurgence of large-scale social movements fostered by ideological interests and easily mobilized through social media.

#### FTC’s enforcement reputation solves global emerging tech---leadership and legitimacy are key.

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Despite these limitations, the FTC has a formidable reputation as an enforcement authority, and commercial entities, and their lawyers, pay close attention to its orders and decisions.248 For example, when the FTC issues a complaint, it is published on the FTC’s website, which often generates significant attention in the privacy community.249 One reason for this is the fear firms have of the FTC’s auditing process, which not only is “exhaustive and demanding,” but can last for as long as 20 years.250 As such, the FTC settles most of the enforcement actions it initiates.251 Firms are motivated to settle with the FTC because they can avoid having to admit any wrongdoing in exchange for taking remedial measures, and thus they also avoid the costs to their reputation from apologizing.252

Though done by necessity, the rule-making process the FTC engages in with its consent orders and settlement agreements can be of benefit when regulating emerging technologies. 253 For one, it allows the flexibility needed to adapt to new and rapidly changing situations.254 Further, the FTC can wait and see if an industry consensus develops around a particular standard before codifying that rule through its enforcement actions.255 As with the common law, which has long demonstrated the ability to adjust to technological changes iteratively, the FTC’s incremental case-bycase approach can help minimize the risks of producing incorrect or inappropriate regulatory policy outcomes.256

In addition to its use of consent orders and settlement agreements, the FTC has created a type of “soft law” by issuing guidelines, press releases, workshops, and white papers.257 Unlike in enforcement actions, where the FTC looks at a company’s conduct and sees how its behavior compares to industry standards, the FTC arrives at the best practices it develops for guidance purposes through a “deep and ongoing engagement with all stakeholders.”258 As such, not only is the FTC’s authority broad enough to regulate the use of emerging technologies such as AI in commerce, but the FTC’s enforcement actions also constitute a body of jurisprudence the FTC can rely on to address the real and potential harms that stem from the deployment of consumeroriented AI.259

Given its broad grant of authority, the regulatory tools at its disposal, and its experience dealing with emerging technologies, the FTC is currently in the best position to take the lead in regulating AI. The FTC’s leadership is sorely needed to fill in the remaining – and quite large – gaps in those few sectoral laws that specifically address AI and algorithmic decision-making.260 Several factors make the FTC the ideal agency for this role. First, the FTC can use its broad Section 5 powers to respond rapidly and nimbly to the types of unanticipated regulatory issues AI is likely to create.261

Second, the FTC has an established history of approaching emerging technologies with “a light regulatory touch” during their beginning stages, waiting to increase its regulatory efforts only once the technology has become more established.262 This approach provides the innovative space needed for new technologies such as AI to develop to their full potential. Thus, as it has in the past, the FTC would focus on disclosure requirements rather than conduct prohibition, and take a case-by-case approach rather than rely on rulemaking.263 Also, as it has traditionally done, the FTC can hold public events on consumer-related AI and issue reports and white papers to guide industry.264

In other words, the FTC has long taken a co-regulatory approach to regulation, which it can and should proceed to do with AI. As in other emerging technology areas, this will help industry continue to grow and innovate, while allowing for the calibration among all relevant stakeholders of the “appropriate expectations” concerning the use and deployment of AI decision-making systems.265 At the same time, the FTC should use its regulatory powers to nudge, and when necessary, push companies to refrain from engaging in unfair and deceptive trade practices in the design and deployment of AI systems.266 The FTC should also place the onus on firms that design and implement those systems to ensure misplaced or unrealistic consumer expectations about AI are corrected.267

By nudging (or pushing) firms in this way, the FTC can “gradually impose a set of sticky default practices that companies can only deviate from if they very explicitly notify consumers.”268 In terms of disclosure requirements, as it has done in other contexts, the FTC can develop rules and guidelines for “when and how a company must disclose information to avoid deception and protect a consumer from harm,” which can include requiring firms to adopt the equivalent of a privacy policy. 269 Given the black box like nature of most algorithmic decision-making processes, there is much that AI developers might have to disclose to prevent those processes from being deemed unfair or deceptive.270

In addition, given its broad authority under Section 5, the FTC is able to address small, nuanced changes in AI design that could adversely affect consumers, but that other areas of law, such as tort, may not be able to adequately handle.271 Again, this is important because AI and algorithmic decision-making can pose profound and systemic risks of harm, even though the actual harm to individual consumers may be small or hard to quantify. And as it has done in the area of privacy, the FTC can become the de facto federal agency authority charged with protecting consumers from harms caused by AI systems and other algorithmic decisionmaking processes.272

The FTC also can, and should, seek to work with other agencies to address AI-related harms, given that the regulatory efforts of other agencies will still occur and be needed in specific sectors or industries, which would impact and be relevant to the FTC’s efforts as well.273 Agency cooperation is essential to ensuring regulatory consistency, accuracy, and efficiency in the type of complex, varied technological landscape that AI presents.274 This should not be a problem as the FTC’s Section 5 authority overlaps regularly with the authority of other agencies, and the FTC itself has a history of cooperating with those agencies.275 Further, the FTC can use its experience working with other agencies to build standards and policy consensus within the regulatory community and among stakeholders. 276

The overarching role the FTC has played in protecting consumer privacy within the United States also has given it legitimacy within the wider privacy community. The FTC has been pivotal over time in promoting international confidence in the United States’ ability to regulate privacy by for example acting as the essential mechanism for enforcing the Safe Harbor Agreement with the European Union.277 As it takes on a similar overarching regulatory role for AI and algorithmic decision-making processes in this country, the FTC should gain a similar level of legitimacy internationally. This is important given the increasingly cross border nature of AI research and development.

#### Unregulated emerging tech cause extinction---outweighs nuclear war.

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The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law.

Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the invention of new weapons. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that new technologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.”

Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction:

A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other possible measures of the potential loss–including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise.

There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction. These measures include:

### Plan---1AC

#### Plan: The United States federal government should increase prohibitions on anticompetitive private sector business practices that substantially reduce bargaining power of workers in labor markets.

### Solvency---1AC

#### Contention 4 is Solvency.

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Plan is key to adapt to market conditions

Howard Shelanski 21. Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP. “Antitrust and Deregulation.” *Yale Law Journal* (127): 1951-1953. <https://www.yalelawjournal.org/pdf/Shelanski_kcn6n4k3.pdf>.

A longstanding debate examines the comparative advantages of antitrust and regulation. The late Cornell economist Alfred Kahn, the architect of airline deregulation in the Carter Administration, wrote that “society’s choices are always between or among imperfect systems, but that, wherever it seems likely to be effective, even very imperfect competition is preferable to regulation.”117 Kahn does not address antitrust in that quotation, but it suggests that he would find antitrust law’s more targeted, case-by-case approach to governing competition to be preferable to regulation. Indeed, Kahn elsewhere wrote, while expressing his “belief in vigorous enforcement of the antitrust laws,” that “the antitrust laws are not just another form of regulation but an alternative to it—indeed, its very opposite.”118 Then-Judge Stephen Breyer has similarly stated that “antitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative.”119

The comparisons that Breyer and Kahn made were, in context, mostly between antitrust and rate regulation, where the agency was trying to protect consumers from monopoly pricing.120 But some of these criticisms, including “high cost; ineffectiveness and waste; procedural unfairness, complexity, and delay; unresponsiveness to democratic control; and the inherent unpredictability of the end result,” apply to most kinds of regulation.121 Regulation might well be worthwhile despite those potential drawbacks, but certain attributes—ex post and case-by-case enforcement, judicial oversight with the government bearing the burden of proof—make antitrust enforcement less vulnerable to those critiques.

Regulation can also be comparatively slow to adapt to new market conditions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than antitrust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transition to more competitive structures.126 As Michael Boudin, a former DOJ antitrust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congressmen and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

### Extra

#### Antitrust is key to effective regulation.

Marshall Steinbam 19. Professor of Law, University of Utah. “Antitrust, The Gig Economy, and Labor Market Power.” *Law and Contemporary Problems* 82(3): 61-64.

This paper sets out an important but under-appreciated aspect of the rise in labor market precarity and diminishing worker bargaining power: the erosion of antitrust laws restricting dominant firms’ ability to use vertical restraints to control and restrict both less powerful affiliates and the workers who work for them, and the concurrent use of antitrust against any attempt by those workers or independent businessmen or contractors to bargain collectively against such concentrations of power. In ascertaining the causes of contemporary inequality in wealth, income, and social status, especially with respect to the labor market, we cannot overlook the role that antitrust has played.

This contrasts with a recent Economic Policy Institute paper by Heidi Shierholz and Josh Bivens that treats the rise of employer power in labor markets, and the extent to which weakening antitrust has caused that phenomenon, as a less important cause of rising inequality and stagnant wages compared to the erosion of labor law and thus of collective bargaining.95 Their evidence for the contention that diminishing worker bargaining power matters more than concentrated employer bargaining power is that inequality within the distribution of labor income is a more significant cause of stagnating wages and the growing gap between median worker pay and average worker productivity than is the declining labor share of national income, which is of more recent vintage than either of the first two economic trends.

But we cannot map rising labor income inequality to worker bargaining power and labor law and the declining labor share of income to employer power and antitrust so neatly. As the analysis in Parts II and III show, income inequality is to a large extent caused by rising earnings inequality between firms, rather than between workers, reflecting employer power to set wages. This is the result of the legalization of business models like the fissured workplace that allow powerful employers to segregate workers from the profits they earn for their bosses. The point of Part II of this paper is that the fissured workplace is the product of both labor regulation and antitrust. Thus, increasing inequality of power between employers and workers cannot be coherently treated as two separate phenomena: rising employer power, and declining worker power.

That means the solution to unequal bargaining power is not necessarily or not entirely an antitrust solution, but antitrust must play a major part, since it implicates the business models available to the economy’s dominant firms. In particular, we should seek, through revived antitrust and labor regulations that both take account of how the economy actually works, and how power is exercised within it, to re-establish the sharp distinction embodied in Richfield Oil. Either workers are employees, in which case they can be controlled by their bosses, who in turn owe them statutory protections including the right to bargain collectively, or they are independent businesses, in which case they cannot be coerced by contract or by any other means. Proposals to extend and strengthen labor law tests for statutory employment to take account of gig economy technologies are crucial, but they will be ineffective so long as employers and lead firms retain the strong incentive to push workers outside their protection. The role of antitrust in that context is to create a significant cost to so doing: the potential for treble damages under antitrust liability should a lead firm be caught coordinating and directing the activities of its non-employee subsidiaries and contractors. That is the mechanism that would weigh against employers’ incentive to mis-classify.

Putting such an antitrust regime in place entails the abandonment of both the consumer welfare standard and, with it, the Chicago School’s jurisprudence of vertical restraints. Instead, any vertical restraint, price or non-price, should be a presumptive violation of the Sherman Act if it is imposed by a firm with market power. And antitrust’s definition of market power must, in turn, be expanded beyond the confined market-share-based Sherman Act jurisprudence to instead take account of the many ways economists have of testing for the existence of market power. Firms would be judged to have market power if they:

• Have the power to unilaterally raise prices for their customers or lower them for their suppliers, including workers;

• Wage- or price-discriminate among customers, suppliers, or workers;

• Unilaterally impose non-price, uncompensated contractual provisions on their counterparties, like non-compete agreements in labor contracts;

• Impede or control entry by would-be competitors; or

• Earn profits and/or make payments to their shareholders at a rate in excess of their market cost of capital.

All of these things are economic indicia of market power because they could not be done by any one or more firms acting in concert in the face of competition from rivals—therefore they should be legal indicia of market power as well.96

Drilling down on how the antitrust laws should target labor market monopsony in particular, not merely prohibit vertical restraints that enable fissured workplace-style business models, the antitrust authorities should bring a monopsonization suit against an online labor platform like Uber that fixes wages and imposes exclusivity on independent businesses, along the lines of Meyer v. Kalanick. If, as would be expected, that case would be adjudicated under the Rule of Reason, despite its economic equivalence to the FTC’s per se cases against professional organizations and unions of independent contractors, then Congress should streamline the Rule of Reason for labor monopsony. This should be done along the lines proposed by Ioana Marinescu and Eric Posner, setting out principles to guide market definition that are responsive to measured firm-level labor supply elasticities.97 In fact, if firms have the unilateral power to dictate wages without causing a significant share of their workforce to leave, then the proper market definition for a monopsonization case may be significantly smaller than the one those authors recommend as a baseline. The point of such a suit is to force Uber to choose one business model or another: either employ the drivers if Uber wants to fix their wages and monitor them on the job, or give up the price- setting and market coordination power that makes the platform such a value proposition for its investors. It cannot be allowed to do both. Meanwhile, workers themselves who are not statutory employees should be protected by antitrust’s labor exemption and should be permitted to bargain collectively. However, any such extension of the labor exemption must not also immunize the powerful employer against whom they would seek to bargain. And at the very least, both no-poaching clauses in franchising contracts and non-compete clauses in employment contracts should be illegal per se.98

Finally, analysis of labor market impact should be incorporated in the statutory prospective merger review process that federal agencies undertake as a matter of routine, in order to prevent the harmful accumulation of monopsony power in labor markets by merger. The current FTC Chairman, Joseph Simons, said as much in Congressional testimony in the fall of 2018,99 but to date there is no evidence that any such investigation has taken place. In the recent merger approval for Staples’s takeover of its supplier Essendant, the majority of the commission claimed that the merger would have a pro-competitive impact on input markets.100 Specifically, if the combined firm reduced the price it pays to manufacturer, it would in fact purchase more from them, not less, and hence that price reduction would not be an exercise of buyer power (the majority’s opinion says nothing about labor specifically as an input). But the idea that the volume of sales is dispositive about the anti-competitive exercise of monopsony power is not correct. Wilmers finds evidence that dominant retailers and manufacturers impose price reductions on the suppliers over whom they exercise market power, and those suppliers in turn pass those price reductions through to their workers in the form of lower wages.101 That is an exercise of monopsony power, but it might well be accompanied by greater sales volume from the supplier to the dominant customer.

Altogether, the thesis of this paper is that there is no way to confront the economy’s crisis of unequal bargaining power without confronting the role that antitrust has played in getting us there. Antitrust is not a substitute to any of the many other ways that policy ought to be extended to halt and reverse the economy-wide erosion of worker bargaining power behind rising inequality and wage stagnation. But strengthening it is a necessary condition for the success of many of those alternatives, notably, labor law reform and collective bargaining on the part of precariously employed gig economy workers.

# 2AC

## Inequality

#### Only the plan solves growth.

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

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

## FTC

## T Per Se

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

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

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

#### Anticompetitive business practices include rule of reason.

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

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

#### 2. No bright line---rule of reason is a prohibition---they function synonymously.

Light 19, Sarah E. Light Assistant Professor of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania., The Law of the Corporation as Environmental Law, 71 Stan. L. Rev. 137, 2019, Lexis/Nexis

While antitrust law can serve as an environmental mandate by prohibiting collusive behavior that keeps environmentally preferable goods from the market, there is also conflict between antitrust law's goals of promoting competition and environmental law's goals of promoting [\*177] conservation. 192 Because antitrust law's per se rule and rule of reason operate on a somewhat fluid continuum, 193 this Subpart discusses the two doctrines together. The per se rule operates as a prohibition, whereas the rule of reason operates as both a prohibition and a disincentive. As noted above, antitrust law generally prohibits certain types of market activity - price fixing, horizontal boycotts, and output limitations - as illegal per se, and harm to competition is presumed. 194 For example, if an industry association declines to award a seal of approval necessary for a product's sale without any good faith attempt to test the product's performance, but rather simply because that product is manufactured by a competitor, such an action would be illegal per se. 195 Under this Article's framework, a per se violation is thus a prohibition. The more fact-intensive inquiry under the rule of reason tests "whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." 196 While this extremely broad statement might suggest that any fact is relevant to the inquiry, the salient facts under the rule of reason are "those that tend to establish whether a restraint increases or decreases output, or decreases or increases prices." 197 If an anticompetitive effect is found, then the action is illegal and the rule of reason operates, like the per se rule, as a prohibition. 198 The rule of reason can also operate as a disincentive, even if no [\*178] court finds an anticompetitive effect, as uncertainty and litigation risk may discourage firms from undertaking legally permissible, environmentally positive industry collaborations. 199 Associations of firms have adopted numerous mechanisms of private environmental governance to address the management of common pool resources like fisheries, forests, and the global climate. 200 Examples include the Sustainable Apparel Coalition's Higg Index 201 and the American Chemistry Council's Responsible Care program. 202 But private industry standards raise special antitrust concerns. An agreement among competitors with respect to product or process specifications may exclude competitors who fail to meet such standards, raising the specter that such industry collaborations really constitute output limitations or efforts to limit competition. 203 While the U.S. Supreme Court has scrutinized private standard-setting associations carefully, 204 it has noted that if associations "promulgate … standards based on the merits of objective expert judgments and through procedures that prevent the standard-setting process from being biased by members with economic interests in stifling product competition … , those private standards can have significant procompetitive advantages." 205 In the absence of price fixing or a boycott, a rule of reason analysis generally applies to product standard setting by private associations. 206 The uncertain outcome [\*179] inherent in the application of antitrust law in this context could therefore serve as a potential disincentive to the adoption of private industry standards. 207 The challenge of course is that some form of explicit sanctions on noncompliant industry members may be necessary for private industry standards to be effective. In the context of private reputational mechanisms like the New York Diamond Dealers Club, 208 Barak Richman has pointed out that the Club's use of reputational sanctions and voluntary refusals to deal with actors who flout industry norms, while welfare enhancing, could nonetheless amount to violations of antitrust law. 209 This echoes the concern raised by Andrew King and Michael Lenox in their extensive empirical analysis of the Responsible Care program created by the Chemical Manufacturers Association (now the American Chemistry Council). 210 King and Lenox concluded that the absence of explicit sanctions on members who failed to meet the standards set by the program left the program vulnerable to "opportunism." 211 While they suggested that industry associations could look to third parties to enforce the rules, 212 an alternative way to facilitate the long-term environmental benefits of stronger sanctions would be to interpret antitrust law in conformity with the environmental priority principle presented below. 213 [\*180] In some instances, the conflict between the values of promoting competition and conserving environmental resources can be stark. 214 Jonathan Adler, for example, has identified this conflict in the context of fisheries - a tragedy of the commons situation in which some form of collective action is required to avoid overfishing. 215 He cites as an example Manaka v. Monterey Sardine Industries, Inc., in which a fisherman was excluded from a local fishing cooperative. 216 The fisherman sued the cooperative under the Sherman Act, and the court found an antitrust violation in his exclusion. 217 While the fishing cooperative's policies were no doubt exclusionary, Adler contends that they also promoted conservation by restricting catch. 218 The fishery collapsed by the 1950s, a collapse Adler hypothesizes might have been "inevitable" but that perhaps might not have occurred in the absence of the antitrust suit. 219 While a court performing a rule of reason analysis must consider whether a restraint on trade suppresses or destroys competition, Adler points out that courts may also "consider offsetting efficiencies from otherwise anticompetitive arrangements." 220 It is not clear, however, that the courts have consistently taken these factors into account. 221 Among other potential remedies, Adler argues that to resolve this tension between antitrust law, on the one hand, and private collective action to conserve environmental resources, on the other, courts should more actively consider the "ancillary conservation benefits of otherwise anticompetitive conduct." 222 Recognizing the long-term health of a fishery would be consistent with antitrust law's purpose of ensuring viable markets exist in the future, and consistent with the environmental priority principle introduced below. 223

## Labor Law CP

#### 4. Doesn’t solve deterrence. Ineffective remedies, agency capture, and expertise gaps ensure failure to curtail anticompetitive practices.

Samuel Weinstein 19. Assistant Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. “Article: Financial Regulation in the (Receding) Shadow of Antitrust.” *Temple Law Review* (91): 487-491.

Even when sector regulators prioritize protecting competition, many lack the expertise and institutional mechanisms to do so effectively. Regulatory agencies might not employ investigatory and adjudicatory procedures sufficient to root out anticompetitive conduct. While courts must in many cases allow for exhaustive discovery, the same cannot be said for most agency proceedings. As a result, even those sector regulators that value protecting competition may not have the institutional systems necessary to follow through effectively.

The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million."

Agency capture is another explanation for regulators' relative weakness as competition enforcers. The literature on capture is well developed. There is a general scholarly consensus that the political nature of top agency jobs and the revolving door between agencies and the industries they oversee make sector regulators much more susceptible to industry pressure than antitrust courts. Studies have shown that capture may be a particular problem at the financial regulatory agencies. There is a steady flow of lawyers between the SEC and CFTC, on the one hand, and Wall Street firms and the law firms and lobbyists [\*489] that represent them on the other, which appears to affect outcomes of agency proceedings in some cases.

Objective measures of the relative competition-enforcement abilities of the antitrust agencies versus the sector regulators tend to confirm the supposition that sector regulators generally cannot be relied on to fulfill the antitrust function in regulated markets. The expert staffs of the antitrust agencies are far larger and more experienced than the competition staffs, if any, at the sector regulators. In recent years, the Antitrust Division typically has had between 340 and 400 attorneys and approximately 50 economists dedicated to competition enforcement, while the FTC's Bureau of Competition has had around 300 attorneys and support staff and approximately 50 antitrust economists. Some regulatory agencies, like the FCC, Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve, have dedicated competition staff with specific expertise. The FCC has a Wireline Competition Bureau, which includes a Competition Policy Division. The FDIC, Federal Reserve, and the Office of the Comptroller of the Currency have staff dedicated to reviewing proposed bank mergers. Even at these agencies, however, the competition staff is smaller and more narrowly focused than the staffs of the Antitrust Division and FTC. [\*490] The comparison with the SEC and CFTC is starker. Neither agency has a dedicated competition division or group. And neither agency established such a body post-Credit Suisse, when it appeared the SEC and CFTC would have increased responsibility for competition matters, or in the wake of Dodd-Frank, which required the agencies to monitor and protect competition in the derivatives markets. This paucity of personnel resources is perhaps predictable given these agencies' bureaucratic cultures.

Considering this lack of experienced competition staff, it is unsurprising that the SEC and CFTC bring very few independent competition-related enforcement actions. While these agencies have collaborated with the [\*491] Department of Justice and other enforcement agencies on significant competition investigations, there is little evidence that they would bring such cases on their own. It seems clear that the financial services agencies are either unwilling or unable to "perform the antitrust function" as envisioned by the Supreme Court's case law balancing antitrust and regulation. This conclusion is troubling. It means that when courts apply Credit Suisse or Trinko to shift the responsibility for policing competition away from the expert antitrust agencies to regulatory bodies that are unprepared for the task, they are leaving some regulated markets, especially the financial markets, vulnerable to anticompetitive conduct.

#### 7.Perm do both---best protection.

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

The antitrust litigation gap has not been filled with other legal protections for workers. But even if those legal protections were introduced, a role remains for antitrust law. Labor markets, like product markets, are best for society when they are competitive. In part II, I propose ways for strengthening antitrust law so it can more adequately address labor monopsony.

#### 10. Perm do the counterplan---**antitrust law refers to any competition law.**

U.S. Code 82. Title 15: Commerce and Trade. Chapter 66: Promotion of Export Trade. Subchapter II: Export Trade Certifications of Review. Section 4021: Definitions. Section Effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

Copyright Act of 1976, 17 U.S.C. §§ 101-1332 (2012)

As used in this subchapter—

(1)the term “export trade” means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2)the term “service” means intangible economic output, including, but not limited to—

(A)business, repair, and amusement services,

(B)management, legal, engineering, architectural, and other professional services, and

(C)financial, insurance, transportation, informational and any other data-based services, and communication services,

(3)the term “export trade activities” means activities or agreements in the course of export trade,

(4)the term “methods of operation” means any method by which a person conducts or proposes to conduct export trade,

(5)the term “person” means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6)the term “antitrust laws” means the antitrust laws, as such term is defined in section 12 of this title, and section 45 of this title (to the extent that section 45 of this title prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7)the term “Secretary” means the Secretary of Commerce or his designee, and

(8)the term “Attorney General” means the Attorney General of the United States or his designee.

#### 11.Mergers cause layoffs---only the aff can solve.

Sarah Miller 10/21/21. The executive director and founder of the American Economic Liberties Project. "Corporate mergers hurt workers — and drag down the job market". Washington Post. 10-21-2021. https://www.washingtonpost.com/outlook/2021/10/21/corporate-mergers-layoffs-antitust/

These mass layoffs weren’t consequences of falling sales or government red tape. Instead, they were all the direct result of mergers. And as our economy has become increasingly monopolized in recent decades, they’re a tiny sampling of what’s been a common phenomenon in communities around the country.

In recent years, policymakers and the public have increasingly recognized the harms caused by rampant corporate consolidation — from Facebook’s manipulation of our online information commons to meatpackers’ flagrant abuse of ranchers to Big Pharma’s deadly collusion on the prices of lifesaving drugs. But one systemic harm that has flown under the radar in the national debate is that news of a merger often means layoffs are not far behind, leaving families, and even whole communities, in peril and devastation.

In just the first three quarters of 2021, global merger and acquisition activity reached a staggering $4.3 trillion, shattering the previous record of $4.1 trillion set in 2007. John Waldron of Goldman Sachs, often described as the U.S. financial industry’s mergers and acquisitions guru, was remarkably candid in a speech last October about the merger boom he is helping to engineer. These merger-driven layoffs “will be complicated societally,” he said, because “politicians are going to be faced with the uncomfortable reality that you’re going to have more big business doing better and that there’s going to be more losses of jobs along the way.”

Waldron’s frankness may be unusual, but the position he takes here is far from exceptional. In fact, for decades, the bipartisan consensus about antitrust and merger policy didn’t just tolerate, but actually embraced job losses. The idea was that merged corporations would pass savings from firing workers on to consumers in the form of lower prices. (Research has shown that consolidation is actually driving up prices — although anyone who pays for an airline ticket, cable bill, or hospital stay could tell you that.)

After 500 unionized workers’ livelihoods disappeared in Eden, N.C., following Anheuser-Busch InBev’s takeover of SABMiller, conservative scholar Daniel Crane said, “The focus [of antitrust] is on consumers and on economic efficiency as opposed to preserving jobs.” Diana Moss of the liberal American Antitrust Institute offered a similar description, noting that antitrust enforcement “doesn’t look at job creation as a benefit of a merger. It tends to go the other way: Realizing cost savings means fewer jobs.”

That this sentiment has been the bipartisan consensus for decades is outrageous. Even more outrageous is the fact that executives who agree to sell their companies routinely get massive payouts — the polite term is compensation packages — for doing so. In the case of T-Mobile/Sprint, for example, T-Mobile’s CEO walked away with a cool $137 million, while thousands of employees got pink slips. And AT&T’s acquisition of Time Warner netted Time Warner’s CEO a $400 million parachute, while a staggering 45,000 workers were cut from payrolls and consumers saw a steady stream of price hikes on streaming and satellite TV services after the merger cleared.

Fortunately, since Crane and Moss made their observations about antitrust and layoffs a few years ago, the previously elite world of antitrust has transformed. President Biden and senior economic officials have publicly rejected the pro-merger, pro-job-cuts approach that both Republican and Democratic enforcers have embraced since the Reagan era. Aggressive new populist leaders at independent agencies like the Federal Trade Commission are now pushing hard against a merger tidal wave.

New research affirms that stopping the merger wave is a key plank of any working people’s agenda. For decades, it has been an article of faith among economists that layoffs don’t particularly matter because it’s easy to find a similar job. While common sense suggests this is nonsensical, the assumption still held most policymakers in thrall as they allowed merger after merger to go through. But over the past five years, younger economists have found that most “labor markets are highly concentrated,” meaning that in many regions, there are not many employers competing over workers. They also found that the fewer employers in any market, the lower wages tended to be. And we’re not talking small amounts of money. It means, as law professor Eric Posner notes, that many “workers are paid at least several thousand dollars per year below the competitive rate.”

Despite this research — and the newfound political energy of the antitrust movement — merger-based layoffs are still endemic, but there are efforts underway to push back. As Federal Trade Commission Chair Lina Khan has made clear, the days of rubber stamping mergers are over, but her capacity and authority are limited. A bill proposed this past spring by Sen. Elizabeth Warren (D-Mass.) and Rep. Alexandria Ocasio-Cortez (D-N.Y.) promised to pause merger activity and, if passed, would have saved thousands of jobs as covid wreaked havoc on the economy. Another bill, introduced by Sen. Amy Klobuchar (D-Minn.), would take a more moderate but still useful approach by banning giant corporations from sucking up smaller ones. Sen. Josh Hawley (R-Mo.) has introduced similar legislation. States such as New York and California are considering major changes to their own antitrust laws. Another idea that could slow the pace of mergers is new legislation that would simply ban the massive “golden parachutes” CEOs get for agreeing to sell out.

It’s clear that when we think about dispiriting job numbers — and the awful realities of job loss on individual lives and families — we should recognize that corporate consolidation plays a role. As antitrust enthusiasm picks up speed, leaders in Congress and the Biden administration must reject the old bipartisan consensus that looked the other way where workers were concerned, recognizing instead that layoffs are very much a part of the problem. If they want to save American jobs, that means putting a stop to the merger frenzy. It might even save their own.

## Adv CP – FTC

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

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

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

The best thing Khan can do? Nothing.

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

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

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

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

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

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

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

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

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

But the FTC’s levers are limited.

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

#### Consumer-centric antitrust law fails to preserve democracy.

Ganesh Sitaraman 18. A professor at Vanderbilt Law School and holds the New York Alumni Chancellor’s Chair in Law. "The Threat Monopolies Pose to Democracy" New Republic. 11-29-2018. https://newrepublic.com/article/152294/unchecked-power

The last forty years have seen a transformation in American business. Three major airlines dominate the skies. About ten pharmaceutical companies make up the lion’s share of the industry. Three major companies constitute the seed and pesticide industry. And 70 percent of beer is sold to one of two conglomerates. Scholars have shown that this wave of consolidation has depressed wages, increased inequality, and arrested small business formation. The decline in competition is so plain that even centrist organizations like The Economist and the Brookings Institution have called for a reinvigoration of antitrust enforcement.

Antitrust law today is, however, very narrowly construed. The currently reigning paradigm originated in the 1970s with Robert Bork—the same Bork whom the Senate would later block from the Supreme Court. Bork’s book The Antitrust Paradox argued that the only goal of the antitrust laws was consumer welfare. This eagle-eyed focus was not only economically efficient, Bork and his followers pointed out, but easy for courts to administer, because consumer welfare could be measured in terms of prices: If prices are going down, the system is working. To abandon this standard, former FTC Commissioner Joshua Wright, a Republican, has said, “would be a monumental shift,” and “a dangerous one.”

Wright’s comments were largely directed at the insurgent neo-Brandeisian school of antitrust—a group of scholars, activists, lawyers, and economists who want to rethink the current approach. The neo-Brandeisians (whom Wright derisively calls the “hipster antitrust movement”) believe that the antitrust laws were written not solely to deal with consumer welfare or purely for economic purposes, but also to ensure competitive markets, break up vast and powerful private entities, and, in the process, preserve democracy. When economic power is concentrated, it destroys not only economic freedom but also political freedom, as the wealthy and powerful use their resources to capture the government and rig it in their favor.

In the midst of this debate over the future of antitrust comes Tim Wu’s The Curse of Bigness: Antitrust in the New Gilded Age. In this concise and accessible history, Wu, a professor at Columbia Law School, takes us from the great merger movement of the late nineteenth century to the antitrust legislation and prosecutions in the Progressive Era to “peak antitrust” in the mid-twentieth century. He judiciously describes how the “Chicago School” of antitrust, with its narrow focus on consumer welfare, came to dominate antitrust law and ushered in our new era of monopoly capitalism. As he briskly narrates the origins and evolution of antitrust law in America, he makes the case that the narrow economic approach is a betrayal of its purposes and historic understanding. The central goals of antitrust law and policy, he argues, have always included preserving the conditions for democracy.

Whether it was Senator John Sherman, author of the Sherman Antitrust Act of 1890, Theodore Roosevelt in his trust-busting prosecutions of Standard Oil and J.P. Morgan’s railroad trust, or Woodrow Wilson, who created the Federal Trade Commission in 1914, the founders of antitrust law saw its work as both political and economic. No problem “is more threatening than the inequality of condition, of wealth, and opportunity,” Sherman said in the debates leading to his eponymous bill. “If the concerted powers of this combination,” he continued, “are entrusted to a single man, it is a kingly prerogative, inconsistent with our form of government.”

What the framers of the antitrust laws understood is that concentrated private power poses a threat to freedom, to our constitutional republic. When a small number of people wield unchecked power, they can oppress their workers and employees, crush the opportunity of any entrepreneur or small business, and even control the government. The result is not a republican form of government, in which representatives of the people rule. The result is an oligarchy or a plutocracy, in which freedom exists only for those with wealth and power. As the celebrated historian Richard Hofstadter once commented of the antitrust movement of the Gilded Age and Progressive Era: “Nothing less was at stake than the entire organization of American business and American politics, the very question of who was to control the country.”

The most famous trustbuster of the era was, of course, Theodore Roosevelt. And here, Wu’s account of the history of antitrust takes a different tack from that of many other neo-Brandeisians. As their name suggests, the neo-Brandeisians tend to be devotees of Supreme Court Justice Louis Brandeis—and implicitly opponents of Roosevelt. Both Brandeis and Roosevelt believed that our constitutional system could not survive if a small number of companies or individuals controlled the government. But whereas Brandeis emphasized breaking up the powerful trusts, Roosevelt thought that bigness might not be a problem if the federal government could prevent big companies from engaging in bad behavior. Both Brandeis and Roosevelt supported public utilities regulation as a way to deal with monopolies, but Brandeis is generally seen as a decentralizer and Roosevelt as a nationalist.

While Wu describes this divide fairly, and firmly sides with Brandeis on the question of nationalism versus decentralization, he gives Roosevelt equal consideration and portrays him as a hero in the saga of antitrust—as the president who used his bully pulpit and the sheer force of his personality to bring antitrust prosecutions into the public conversation. Many of Roosevelt’s detractors point out that his successor William Howard Taft initiated more cases. But it was Roosevelt’s prosecutions of Standard Oil and the Morgan railroad trust that became the marquee fights, featuring the most powerful men in America. It was thus Roosevelt who set an example that has echoed through history, serving to bolster the efforts of Thurman Arnold in the 1930s and early 1940s and Joel Klein (who prosecuted Microsoft) in the 1990s. This reading of Roosevelt is insightful: Because antitrust is not a technical enterprise, it cannot be left to faceless, nameless economists and technocrats. Like politics more broadly, it requires leaders with the courage to take on the powerful and the charisma to build public support for reform.

Antitrust also played an important role in the greatest battle of the twentieth century—between fascism and democracy—though this is largely forgotten today. During the 1930s and 1940s, the New Dealers and their allies recognized that monopolists and cartels had helped bring the authoritarian regimes of Germany and Japan to power and had kept them in power. German monopolies and cartels in a range of industries—railroads, armaments, chemicals—supported Hitler and the Nazis when they had comparatively few backers, and then cooperated with the Nazi regime, sustaining it during the war.

The New Dealers saw that economic power and political power were intrinsically linked. In Germany, an unequal economy had enabled tyranny. “Here was arbitrary power without public control,” Thurman Arnold, head of the Justice Department’s Antitrust Division, wrote in a 1940 book. The country “became [economically] organized to such an extent that it needed a general and Hitler leaped into power; had it not been Hitler it would have been someone else.” After the war, Arnold’s lieutenants joined teams working on the Marshall Plan and pushed Germany to adopt antitrust laws. The aggressive competition laws of today’s European Union thus have the New Dealers as one of their ancestors. Democratizing Europe required democratizing the economy in Europe.

This principle is, however, often overlooked in analysis of crises today: A stream of books and commentary on the return of authoritarianism around the world—Fascism: A Warning; How Democracies Die—largely undervalues the relationship between economics and politics. While their authors fear the breakdown of constitutional norms and a loss of faith in democratic institutions, they have far too little to say about widening inequality and the rising concentration of economic power. In today’s global contest between democracy and nationalist oligarchy, economic power is a critical element and, as a result, antitrust law is an essential tool.

#### Democracy solves great power war.

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

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

## Small Business CP

#### The counterplan only solves the bottom end of the labor market.

Alan Manning 20. Professor of economics at LSE’s department of economics and director of the community programme at the Centre for Economic Performance. “Why we need to do something about the monopsony power of employers.” September 5 2020. https://blogs.lse.ac.uk/usappblog/2020/09/05/why-we-need-to-do-something-about-the-monopsony-power-of-employers/

So, what can be done about monopsony? One approach is to directly raise wages, e.g., through minimum wages. This approach has its place but can only help to address monopsony power at the bottom end of the labour market. Elsewhere, perhaps we need measures to give countervailing power to workers, either through a more supportive environment for trade unions or giving workers a louder voice on boards. Trade unions are often accused of raising wages above competitive levels but if we start from a point where wages are too low, we want wages to be higher.

#### Inequality is key.

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

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

#### The SBA fails to help small businesses---studies prove.

Ray Hennessey, 13. former editorial director of Entrepreneur. “Why the SBA Should Be Abolished”. The entrepreneur. 9-4-2013. https://www.entrepreneur.com/article/228186

Rarely has an agency had less impact on the group it purports to benefit than the SBA. With lax underwriting standards, high default rates and a lack of results, [the SBA](https://www.entrepreneur.com/topic/sba) has become a non-entity in the small-business world and a risk to taxpayers. Here's why: It funds bad ideas. The SBA’s loan programs are designed to fund businesses that can’t find funding elsewhere. That’s seen as a noble role – one worthy of taxpayer dollars. It is also insanely risky. The financial markets are eager to back companies. Private equity and venture capital firms raise billions of dollars to put to work funding innovative ideas. Banks are eager to lend to local businesses. Many corporations invest in smaller companies for strategic and competitive reasons. Thanks to record-low interest rates, there is no shortage of capital to put to work – only a shortage of good ideas. And that’s sadly where the SBA has carved out its niche. Once companies find the funding doors closed to them everywhere else, they turn to the government. But, should these companies even be funded in the first place? While a private-equity firm has fairly strict criteria for the companies they back, the rules for who qualifies for a loan, the SBA has [relatively loose criteria](http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-sba-7a-guaranteed-loan.pdf)

, particularly for its smallest loans. Underwriting is done by banks, but, with the SBA assuming much of the risks for these loans, many banks will offer SBA-backed loans for businesses that wouldn’t otherwise qualify for private market loans. As a result, it lets through ideas that the marketplace has already determined won’t fly. That’s a waste of capital that could be deployed elsewhere. It subsidizes banks. There’s a myth that the biggest financial benefit the SBA produces is for small businesses. Rather, the real wealth accrues to the big banks. The SBA’s primary 7(a) lending program guarantees 85 percent of loans up to $150,000 and 75 percent of those from $150,000 to $5 million. The banks issue the loans knowing they can’t lose. If the borrower defaults, the banks get much of their money back from the government. Is it any wonder, then, that large banks love the program? According to Cato Institute analyst Tad DeHaven, there were 2,600 eligible lenders under the SBA’s 7(a) program, but the top 10 made up for a full quarter of total volume. “Although lawmakers portray the SBA’s loan programs as a boost for small businesses, the programs are actually a form of corporate welfare for some of America’s largest banks,” [DeHaven wrote](http://www.cato.org/blog/cbo-perpetuates-small-business-administration-myth). It has a horrendous track record. Since banks have a guarantee that they won't lose money, there are little real underwriting standards. [A damning report in the Dayton Daily News](http://www.dispatch.com/content/stories/business/2013/04/14/taxpayers-paid-1-3b-for-loan-defaults.html) this year found that, since the beginning of 1990, 168,324 bad loans were completely charged off to the Treasury, representing $8.6 billion in payments to lenders by the SBA. Further data suggested many of these borrowers should never have gotten the money in the first place. More than half of the 168,324 charged-off loans failed before 20 percent of the loan was repaid. More than 1 in 3 repaid only 10 percent or less of the loan. More than 7 percent did not reduce the principal on their loan at all, according to the Dayton Daily News. It puts taxpayers at risk. So, if the banks aren’t facing any risk, who is? You are. The total taxpayer cost for these failures, according to the Dayton Daily News, is $1.3 billion. And that's on top of all the other overruns at the agency. In fact, the SBA has a poor track record when it comes to spending within its means. Between 2006 and 2011, the total excess spending vs. what the SBA requested in funding grew from $100 million to $5 billion. And SBA's actual spending in that period has grown more than 600 percent, from $905 million to $6.2 billion, according to Veronique de Rugy, senior research fellow at the Mercatus Center at George Mason University. It’s not as important as you think. Of the top 15 industries receiving the most SBA-guaranteed loans over the past 10 years, only 0.5 percent of the small businesses in these industries received loans backed by the SBA, [de Rugy, a longtime critic of the SBA, says](http://online.wsj.com/article/SB10001424052702304537904577277701392070324.html). In short, large businesses, in industries that matter most, get only a negligible amount of funding from SBA-backed loans. That means shutting down the program would have a negligible effect on lending. Why keep a government agency in place if most of the market wouldn't notice it is gone?

## Pharma DA

#### Anticompetitive conduct in the pharmaceutical industry undermines effective and efficient innovation.

Robin Feldman 21. Stanford University (BA), Stanford Law School (JD). Arthur J. Goldberg Distinguished Professor of Law at the University of California, Hastings College of Law. “Drug companies keep merging. Why that’s bad for consumers and innovation.” <https://www.washingtonpost.com/outlook/2021/04/06/drug-companies-keep-merging-why-thats-bad-consumers-innovation/>.

This dramatic consolidation has remade the pharmaceutical industry. Before 1988, a robust cohort of drug manufacturers often competed across multiple therapeutic areas. This competition encouraged exploring different possible approaches for treating the same disease state as well as treatments for a wider range of health concerns, increasing the potential for innovations that might improve lives.

Although this marketplace was better for innovation, drug companies were drawn to merging because of the lure of increased market power, improved synergies, larger economies of scale and more diverse product portfolios.

Abrupt changes to the environment surrounding the pharmaceutical industry also encouraged consolidation. In the late 1980s, widespread deregulation at both the state and federal level may have facilitated an uptick in mergers, particularly as companies with expiring drug patents sought to make up for their revenue losses by acquiring other profitable drugs.

The second merger wave beginning around 1996 can be traced in part to another external shock, as globalization spurred firms to join forces to reach more potential markets. Similar to the first merger wave, “patent cliffs,” in which many of a company’s drugs were set to lose their lucrative patent monopoly around the same time, also helped push firms to combine forces.

But the newly consolidated pharmaceutical industry actually stifled innovation. In the period following merger waves one and two, the industry generated fewer new molecular entities each year compared to pre-merger levels. Merged drug companies also spent proportionally less on research than their non-merged competitors.

Consolidation also enabled drugmakers to directly quell competition through what were known as “killer acquisitions,” in which they acquired innovative peers solely to stop potential competition. Moreover, with the assistance of pharmacy benefits managers, newly giant pharmaceutical firms could leverage their dominant position with one type of drug to suppress competitors for another one of their drugs, or they could use the combined power of multiple drugs to shore up a waning monopoly position. Both of these practices could block cheaper drug competitors from reaching patients, inhibiting access and affordability.

In short, consumers were the losers from the two waves of drug company mergers. They confronted higher prices and fewer choices — and saw companies exploring fewer paths that might produce breakthroughs. To make matters worse, around 2010, another wave of mergers began.

#### No link---antitrust doesn’t deter innovation.

Tyler J. Klein 16. Lawyer. “Antitrust Enforcement Against Pharmaceutical Product Hopping: Protecting Consumers or Reaching Too Far?” Saint Louis University Journal of Health Law & Policy. Volume 10; Issue 1; Article 12. 2016. https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1058&context=jhlp

In response to these arguments, opponents assert that antitrust enforcement impedes innovation in the pharmaceutical industry.147 The idea of chilling innovation and deterring the development of new, potentially life-saving drugs is certainly concerning. However, this argument is less concerning than it sounds. When submitting its Amicus Brief in support of Plaintiff-Appellee State of New York in the Second Circuit Actavis case, the AAI addressed this argument. First, the AAI asserted that no empirical evidence existed showing that antitrust scrutiny of product hopping deters innovation.148 Moreover, the AAI further asserted that antitrust scrutiny of product hopping actually increases innovation.149 Without antitrust scrutiny of product hopping, brand- name companies will invest in making minor alterations to products to extend the patent, rather than investing in research for new, innovative drugs.150 Indeed, one study found that “[b]rand-name firms have sought increasing recourse to ancillary patents on chemical variants, alternative formulations, methods of use, and relatively minor aspects of the drug.”151 Essentially, immunizing brand-name pharmaceutical companies from antitrust liability encourages them to spend time and resources in order to find ways to make insignificant changes to current drugs in order to preserve the patent, instead of using time and resources to develop the next innovative drug. In its Brief as Amicus Curiae filed with the district court in Mylan, the FTC bolstered this argument by asserting: “The threat posed to existing brand drugs by generic competition can incentivize the brand company facing dramatic loss of sales to develop new and innovative drugs that benefit consumers.”152 Notably, the FTC recently filed a Brief for Amicus Curiae in support of Mylan in its appeal to the Third Circuit.153 In sum, there is no evidence that antitrust regulation of product hopping slows down innovation by brand-name pharmaceutical companies. Rather, regulation actually encourages innovation, as the competition from generics causes brand-name manufactures to innovate new products and prevents them from spending resources on insignificant changes to extend patents.

#### No synthetic biology impact.

Jefferson et al. 14—Faculty in the Department of Social Science, Health, and Medicine at King’s College London [Catherine Jefferson, Filippa Lentzos, and Claire Marris; “Synthetic biology and biosecurity: challenging the ‘myths,’” *Frontiers In Public Health*, Vol. 2, Art. 115, August, Emory Libraries]

Challenges to Myth 1

These concerns are based on the assumption that synthetic biology already has made it, or shortly will make it, easy for anybody to “engineer biology.” The underlying vision is one where well-characterized biological “parts” can be easily obtained from open-source online registries and then easily assembled, by people with no specialist training and working outside professional scientific institutions, into genetic “circuits,”“devices,” and “systems” that will reliably perform desired functions in live organisms (1, 2). However, this does not even reflect current realities in academic or commercial science laboratories, where researchers are still struggling with every stage of this process (19, 20).

Moreover, synthetic biologists who participated in our recent workshop (11) argued that although historical experience with other forms of (non-biological) engineering demonstrate that dependence on the craft skills of a small number of highly trained individuals is reduced for some parts of the production process, usually by standardization and mechanization, this does not mean that skills become irrelevant or that all aspects of the work become easier. Specialized expertise, teamwork, large infrastructures, complicated machinery, advanced technology, trouble-shooting, and organizational factors continue to be required when a design and engineering approach develops. Thus, even though the engineering approach of synthetic biology aims to make processes more systematic and more reproducible, this will not make it easier for anybody to engineer biology. Indeed, some aspects of the work may become more complex, and new skills may be required.

A useful analogy to aeronautical engineering was used at the workshop to illustrate this. Planes are built from a large number of well-characterized parts in a systematic way, but this does not mean that any member of the general public can build a plane, make it fly, and use it for commercial transportation. Thus, it is too simplistic to suggest that if synthetic biology becomes an engineering discipline it will necessarily become easier for anybody to engineer biological systems, including dangerous ones. More care needs to be taken in the interpretation of statements about how synthetic biology will lead to “de-skilling” and “make the engineering of biology easier.”

Furthermore, the experiences of iGEM teams tend to demonstrate the challenges of successfully performing synthetic biology experiments, and demonstrate the ongoing need for guided instruction and collective expertise. iGEM is the annual International Genetically Engineered Machine competition, which brings together undergraduate students from across a range of disciplines to work collaboratively to design and build biological systems and operate them in living cells. The iGEM competition is linked to the parts-based approach to synthetic biology through its contributions to the Registry of Standard Biological Parts, and provides a proof-of-principle for the synthetic biology agenda (21).

iGEM teams typically receive considerable guidance from senior faculty members and, while iGEM is a collaborative exercise, biologically trained students still tend to be the ones who have the central roles in daily laboratory activity. Balmer and Bulpin (22) describe the collaborative experiences of one undergraduate iGEM team:

Over the course of the project, as time pressures became more significant, it became natural, when assigning the activities of the day, for them to conduct the procedures in which they had each become experts, as otherwise it would require them teaching someone else. [. . .] As one of them explained:“From the start I had the idea that I would take a main role in modelling but also get some experience in the lab. However, I quickly gave up on lab work after the first few weeks because the time frame for the project we had was not enough to learn the basics needed for the lab and apply them.” Owing to these contextual, material specificities of the laboratory and modelling work, the sub-teams were quickly separated by knowledge, time and space [(22), p. 14, emphasis added].

Cockerton (23) reported similar findings from her ethnography of two iGEM teams:

both teams found that many protocols were not streamlined as descriptions of synthetic biology often present. There was a great deal of tedious work, which involved small volumes of clear liquid and lots of waiting time. Many cycles of failed experiments had to be repeated (p. 306).

[. . .]

the reality of everyday design-experiment-fail-redesign (and so on. . .) cycles serves as a sobering reminder that the foundations of synthetic biology were not then (when I was in the field in 2009), and are not yet (2011), stable. Many experiments don’t work out as planned because many BioBricks from the Registry don’t function reliably. Presently, engineering that is accomplished with BioBricks in one lab and described in a standard fashion, certainly does not guarantee that the same result is reproducible in another lab (p. 307–308).

These in-depth analyses of synthetic biology in action illustrate the importance of collective expertise in synthetic biology research and the challenge posed by tacit knowledge, especially for wet lab work. Members of iGEM teams have or acquire distinct specialist sets of knowledge and skills, which are then applied to the collective project. Training by experienced professional researchers, and specialist skill sets acquired through trial and error, are still highly relevant to the success of synthetic biology projects.

## PTX DA

#### Won’t pass- Manchin opposes labor protections, threatens climate provisions

Joseph Morton, 11-12-2021, "Manchin opposes additional EV tax credit tied to unions," Roll Call, https://www.rollcall.com/2021/11/12/manchin-opposes-additional-ev-tax-credit-tied-to-unions/

Democrats hit a major speed bump Thursday in their plan to supercharge new electric vehicle tax credits for cars and trucks built by domestic, unionized workers when Sen. Joe Manchin III, a key swing vote, said he opposes that kind of preferential pro-labor treatment.

The Automotive News reported that the West Virginia senator, a moderate Democrat, criticized such pro-union provisions in the budget reconciliation package as “wrong” and “not American” while participating in an event announcing Toyota’s $240 million investment in a components plant in his home state.

“When I heard about this, what they were putting in the bill, I went right to the sponsor (Sen. Debbie Stabenow, D-Mich.) and I said, ‘This is wrong. This can’t happen. It’s not who we are as a country. It’s not how we built this country, and the product should speak for itself,” Manchin told the Automotive News in an interview. “We shouldn’t use everyone’s tax dollars to pick winners and losers. If you’re a capitalist economy … you let the product speak for itself, and hopefully, we’ll get that, that’ll be corrected.”

That position puts Manchin at odds with Stabenow and other members of Michigan’s congressional delegation, and could disrupt his party’s sweeping efforts to accelerate deployment of electric vehicles across the country — a key part of their plans for tackling climate change.

Democrats’ budget reconciliation package pending in the House would grant up to $7,500 in tax credits for plug-in electric vehicles, but those credits would be boosted an additional $4,500 if the vehicle’s final assembly takes place at a U.S. facility operating under a union-negotiated collective bargaining agreement.

Winners and losers

That’s expected to benefit companies such as General Motors Co., Ford Motor Co. and Stellantis NV, but disadvantage those that don’t use union labor in their U.S. operations such as Toyota and Tesla. Other countries have objected to the provisions on the grounds that they violate trade agreements, and international car manufacturers — many of whom have significant operations in America — have taken issue with the labor protections.

The trade association Autos Drive America earlier this year launched an ad campaign opposing the provisions on behalf of its members, which include international automakers such as Honda, BMW, Toyota, Mercedes-Benz, Hyundai and others.

The group’s president and CEO Jennifer Safavian said in a statement earlier this year that half of all vehicles made in the United States are built by Americans who work in nonunion operations.

“Prioritizing among American auto workers creates an unlevel playing field that will limit consumer choice and punish non-unionized American workers, their families, and their communities," Safavian said in the statement.

Rep. Andy Levin, D-Mich., said in an interview earlier this month that supporters weren’t backing off the provisions in the face of such criticism. He said it’s ironic that some international automakers are based in countries with high unionization rates and suggested their U.S. operations represent a way for them to tap into cheaper nonunion labor.

“Union workers in the auto industry helped build the middle class in this country,” Levin said. “They make better wages, benefits and pensions than the other workers and the idea that we shouldn't reward that — we are about making work dignified, making it paid, making it valued and rebuilding the middle class.”

In a statement Thursday, Stabenow made similar points and said that she supported Manchin two years ago on legislation to help members of the United Mine Workers of America in West Virginia.

“At that time, some argued his bill was unfair and was picking winners and losers. But we rejected that argument and stood together to protect union pensions,” Stabenow said. “This issue is no different. Standing up for hardworking Americans is always the right thing to do.”

Republicans have been vocal in criticizing the additional tax credit proposal as a misguided handout to labor organizations, characterizing it as a way for Democrats to pay back campaign contributions that flow from those groups.

But Manchin isn’t the only Democrat who has raised concerns about the protections.

Rep. Terri A. Sewell represents an Alabama district where Mercedes-Benz and Hyundai have announced plans to build electric vehicles. She said during the House Ways and Means markup of the budget reconciliation package that there shouldn’t be a choice between unionized and nonunionized workers.

Manchin is likely to hold as much influence as anyone over the shaping of the budget reconciliation package because the 50-50 Senate split means Democrats can’t afford to lose a single member of their caucus. If he does insist on striking the union protections, that could potentially have repercussions for the tax credits as a whole.

#### Inflation forces a new round of cuts from Manchin

Alexander Bolton, 11-12-2021, "Inflation spike gives ammunition to Manchin," TheHill, https://thehill.com/homenews/senate/581237-inflation-spike-gives-ammunition-to-manchin

Soaring inflation is shaking up negotiations on Capitol Hill over President Biden’s Build Back Better agenda, giving Sen. Joe Manchin (D-W.Va.) and other centrists more leverage to push for a smaller reconciliation package.

The annual inflation rate hit a 30-year high under Labor Department statistics released Wednesday, giving ammunition for Manchin to argue against government spending.

In the wake of the numbers, Democratic aides and strategists are growing less optimistic that Manchin can be persuaded to support adding back a proposal to establish a national paid family leave program. And it’s possible Manchin could more forcefully press for new cuts.

Manchin has cited rising inflation as one of his main reasons for not supporting a social spending bill above $1.5 trillion, and he’s held back from publicly backing the slimmed-down $1.75 trillion framework while he studies its potential impact on the economy and prices.

“Manchin is a fiscal conservative. He always has been and always will be,” said Mike Plante, a Democratic political consultant based in West Virginia who advised Manchin’s 2000 gubernatorial campaign.

“His fear is that we end up passing things that essentially are not fully paid for and we’ll kick the can down the road [on paying for it.] And he has to be shown that’s not being done,” Plante added. “He wants to make sure that the programs that are being funded will have an impact and there are reasonable revenue streams for them and we’re not just passing things for the sake of saying we did something.”

After the Labor Department reported Wednesday that the consumer price index jumped 6.2 percent in October compared to a year ago, Manchin warned “the threat posed by record inflation to the American people is not ‘transitory’ and is instead getting worse.”

He’d already cited inflation as a top concern in September, saying that prices at the Dollar General stores are rising and “that’s hard for West Virginia, a lot of people do shop there.”

#### Biden PC fails

The Intercept, 11-5-2021, "Deconstructed: Biden Should Look to Obama’s Mistakes," Intercept, <https://theintercept.com/2021/11/05/deconstructed-biden-build-back-better-obama/>

What do you think it is about Democrats that they can’t move that quickly? And they can’t move as efficiently as Republicans? Because it’s not as if the tax code is necessarily simpler? It was still a monster of a piece of legislation.

DS: Oh sure. I think part of it is a lack of presidential leadership. Look, we saw this with the ACA, the Affordable Care Act. Obama essentially delegated responsibility for the details of the bill to Congress. Now, obviously, constitutionally, that’s what Congress does.

But the point is, is that Obama very clearly said: Listen, I’m going to wait for the Max Baucus-run Senate Finance Committee and the House Ways and Means Committee to come up with a bill; I’ll lay out a couple of principles, and they can duke it out, and they can weigh in every now and again.

That’s much different than what we saw with, for instance, Donald Trump and his tax cuts, or George Bush and those tax cuts. The White House had a plan, they had a specific set of plans, and they rammed it through Congress. Now, here’s got to be a middle ground there somewhere. But the point is that it’s the same thing that’s happened with Biden, and the current reconciliation bill. Biden, in a certain sense, where is he? What is he doing? Why hasn’t the White House been much more on the ball about a specific set of proposals, going to different states to campaign for it? None of that has happened.

And the one that kind of blows my mind, although I’m no longer surprised by this kind of thing: OK, you can argue, West Virginia, Biden lost it. He doesn’t have as much political capital in a state like that. He won Arizona. He has a lot of leverage to use in a place like Arizona, with somebody like Kyrsten Sinema. That leverage in my view, I don’t see any evidence that that’s even been used.

So again, it comes back to: If your entire attitude is a conflict aversion with your own party; if you’re trying to somehow appease your corporate donors, and tell voters you’re solving the problems created by your corporate donors, and you have a hands-off attitude about how to actually get an agenda passed, then you end up with what we have now — a morass that’s going on for weeks and weeks and months of capitulations and surrenders.

And, not surprisingly, that ends up not being all that popular. Joe Biden, by one estimate, is at the lowest approval rating of any president in modern history at this time in his presidency. You can try to blame all sorts of external forces for that. But I think usually the most simple explanation is the correct one. And the most simple explanation is: He and his White House have spent months generating headlines, surrendering on the most popular policies that people want.

#### Doesn’t solve the climate.

Lee Harris, 11-8-2021, "Manchin Could Score Carbon Capture Subsidies to Prop Up Coal," American Prospect, https://prospect.org/infrastructure/building-back-america/manchin-could-score-carbon-capture-subsidies-to-prop-up-coal/

The signature climate plan in Democrats’ Build Back Better legislation would have penalized power companies that fail to hit annual targets for increasing renewable energy. Following the collapse of that carrot-and-stick approach, funding in the party’s mega-bill is being diverted to a subsidy schemethat many energy analysts fear will have the opposite effect: It could keep polluting plants running, even as their costs rise.

To compensate for the loss of the clean energy standard, which was cut due to opposition from West Virginia Sen. Joe Manchin, Democrats are proposing a range of clean energy subsidies including a multibillion-dollar expansion to the current tax incentive for carbon capture, known as 45Q.

Carbon capture, which traps CO2 emitted in manufacturing or electricity production, and direct air capture, which sucks the greenhouse gas from the atmosphere, could be needed to deal with stubborn sources of pollution. So far, however, neither technology has been proven at commercial scale. Climate activists say carbon capture should only be a last resort, given the availability of cheaper renewable alternatives to coal and gas.

But as demand for coal declines, elected officials from coal producer states like Wyoming and West Virginia have urged the uptake of carbon capture.

THE EFFORT TO KEEP coal viable is becoming more and more expensive. Electric bills have risen as a shrinking coal fleet attempts to keep up with mandatory environmental regulations, which frequently require large investments in upgrades.

Attaching carbon capture facilities to coal plants is among most expensive of those outlays, potentially costing more than the value produced by generating electricity from coal.

In West Virginia, which relies heavily on coal-fired generation, average residential electricity rates have nearly doubled since 2005. Monthly electric bills from the West Virginia subsidiaries of American Electric Power, which owns the nation’s largest electricity transmission system, more than doubled over the last 13 years from an average of $62.46 to $138.57.

If carbon capture is adopted across the country and passed on to electricity consumers, it could drive up monthly bills by more than a quarter, according to a recent study by the Ohio River Valley Institute, a think tank that supports renewables and economic growth in Appalachia. In states like Wyoming, Kentucky, and Utah, which depend heavily on coal and gas, carbon capture could increase electric bills by more than 50 percent.

No state would see its bills rise more than West Virginia, which last year sourced 88 percent of its electricity from coal and 5 percent from natural gas. The study found that West Virginians could see their electric bills increase by 63 percent.

Joe Manchin has acknowledged the problem. “I’d love to have carbon capture,” he told reporters in September, but “it’s so darn expensive.”

The senator is au courant on the costs. In September, the Charleston Gazette-Mail first reported, Manchin met with Charlotte Lane, the chair of the state Public Service Commission, to discuss federal funding for installing carbon capture technology at Mountaineer Power Plant, a coal-fired station owned by AEP.

It wouldn’t be the first time the facility tried out carbon capture. In 2010, Mountaineer installed and operated a pilot project for carbon capture, treating just 2 percent of the plant’s exhaust at a cost of around $100 million. A bigger demo project, proposing to treat 20 percent of the plant’s emissions for around $700 million, was canceled.

That scrapped effort is detailed in a briefing document, first made public by The American Prospect, which was discussed at Lane’s meeting with Manchin. The Energy and Policy Institute, a watchdog group that supports renewable energy, obtained the document in a public-records request.

“If the entire plant could be converted, the capital cost may be between $3 to $5 billion and operating costs may increase by 25% to 35%,” the document reads. “That level of cost for utility customers in West Virginia is unsustainable. Therefore, federal funding of close to 100% of the capital costs is needed.”

That briefing occurred on September 9. In mid-October, Manchin rejected the clean energy standard, and environmental policymakers set to work cobbling together alternative proposals to reduce emissions. Those include federal subsidies to fund carbon capture facilities, potentially including the proposal at Mountaineer.

# 1AR

## Inequality

#### Labor market concentration is increasing---focusing antitrust on workers is key.

Brian Callaci 9/28/21. Chief Economist, Open Markets Institute. Testimony Before the Committee on the Judiciary, Subcommitee on Antitrust, Commercial, and Administrative Law United States House of Representatives. September 28, 2021. Hearing on Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker. https://docs.house.gov/meetings/JU/JU05/20210928/114057/HHRG-117-JU05-Wstate-CallaciB-20210928.pdf

However, over the past few decades, while attacks on unions and the declining value of the minimum wage have removed key countervailing forces to monopsony power, antitrust jurisprudence and policy have taken us a step backwards towards the conditions that so outraged Adam Smith centuries ago. In particular, antitrust has:

• Looked the other way as large corporations have consolidated buyer, or monopsony, power over both local labor markets and entire supply chains;

• Allowed employers to supercharge their power over employees through restrictive contracts like noncompete clauses, mandatory arbitration, and no-poaching agreements; and

• Facilitated large corporations’ efforts to deny their workers employment rights, by sanctioning the use of restrictive contracts to dominate non-employee independent contractors and small business owners, subjecting them to tight corporate control virtually equivalent to that of employees. This has led to the creation of a so-called “gig economy” of workers without rights, and of “fissured workplaces” where workers have some rights, but not against the company that really pulls the strings controlling their working conditions.

To return balance to the economy, Congress should act to make it harder for corporations to merge and abuse their dominant position, ban coercive contracts like noncompetes, expand the antitrust labor exemption to independent contractors, and close the loopholes allowing corporations avoid labor and employment obligations by substituting restrictive contracts for employment relationships.

1. Monopsony

Labor market concentration has increased since 1977. 3 The majority of US labor markets are currently highly concentrated according to traditional antitrust criteria. The government’s Horizontal Merger Guidelines assess market concentration according to a number called the Herfindahl-Hirschman Index (HHI), calculated as the sum of the squares of the market shares of each firm in the market. According to the guidelines, a market is “moderately concentrated” if the HHI is above 1,500, and “highly concentrated” if above 2,500. Recent research has found that the average labor market HHI in the US is 3,953, equivalent to just 2.5 firms hiring at equal market shares. Rural areas are especially likely to have highly concentrated labor markets.4

High concentration is associated with lower wages for job postings and lower job quality. On average, a 10 percent increase in concentration is associated with a 0.3 percent to 1.3 percent decrease in wages.5 Labor market concentration is also associated with violations of labor rights.6 Unfortunately, antitrust enforcement has all but ignored the effects of decreases in competition on workers. No court has ever blocked a merger because of its effects on labor markets.

It’s not just direct employees who are affected by increasing concentration. Since 1981, concentration across economic sectors has increased.7 Horizontal concentration has increased the power of large buyers, like Walmart and Amazon, over supply chains.8 Buyer power not only squeezes the profits of small businesses upstream from the large buyer, 9 it also reduces the wages of workers at upstream suppliers.10

In many instances monopsonistic wage suppression is associated with lower output and higher prices, and would be condemned under a consumer welfare standard. However, that is not always the case. In some cases monopsony leads to a reduction in labor’s share without shrinking the size of the overall pie. Antitrust enforcement should expand its focus beyond harm to consumers or output, to take into account effects on workers and suppliers as well. 11

2. Coercive Contracts Imposed on Employees

Not content with increased monopsony power over workers through concentration, or with decreased worker bargaining power through deunionization and the declining value of the minimum wage, employers have gone further and imposed restrictive contracts on workers that restrict their mobility, creating artificial monopsony power.

A particularly egregious example of these restrictive contracts is what is known as a noncompete clause. These contracts prevent workers from leaving their job for another employer in the same industry. In 2016, eighteen percent of workers were bound by noncompete clauses, and forty percent had been bound by one at some point in their careers. Only ten percent of employees actually negotiated over their noncompete, and one-third were presented with their noncompete after having already accepted their job offer.12

These contracts suppress wages. A recent study found that an Oregon law making noncompetes unenforceable for hourly workers raised wages for all hourly workers—not just those subject to noncompetes—by two to three percent.13 Another, more comprehensive study found that stricter enforceability reduced earnings for female and for non-white workers by twice as much as for white male workers.14 The Open Markets Institute, along with over sixty signatories, has petitioned the Federal Trade Commission to ban these restrictive contracts.15

#### 4. Labor market concentration is increasing.

Brian Callaci 9/28/21. Chief Economist, Open Markets Institute. Testimony Before the Committee on the Judiciary, Subcommitee on Antitrust, Commercial, and Administrative Law United States House of Representatives. September 28, 2021. Hearing on Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker. https://docs.house.gov/meetings/JU/JU05/20210928/114057/HHRG-117-JU05-Wstate-CallaciB-20210928.pdf

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#### 6. Wages are specifically down.

Marcela Escobari 19.

A. 44 percent of American workers, a whopping 53 million people, earn low wages

B. Growing industry concentration and weakened unions erode workers’ capacity to bargain for higher wages or redress labor disputes.

#### Labor shortage sustaining---slows economic recovery

Ben Casselman 10/19. Writes about economics and other business topics for The New York Times, with a particular focus on stories involving data; he previously served as chief economics writer for the data-journalism web site FiveThirtyEight, and before that as a reporter for The Wall Street Journal. "The Economic Rebound Is Still Waiting for Workers," New York Times, https://www.nytimes.com/2021/10/19/business/economy/us-economy.html

Fall was meant to mark the beginning of the end of the labor shortage that has held back the nation’s economic recovery. Expanded unemployment benefits were ending. Schools were reopening, freeing up many caregivers. Surely, economists and business owners reasoned, a flood of workers would follow.

Instead, the labor force shrank in September. There are five million fewer people working than before the pandemic began, and three million fewer even looking for work.

The slow return of workers is causing headaches for the Biden administration, which was counting on a strong economic rebound to give momentum to its political agenda. Forecasters were largely blindsided by the problem and don’t know how long it will last.

#### 2. Firm Producivity and concentration is not up---inequality is a bigger internal link to growth.

Shailly Gupta Barnes et al. 10/27. \*\*Policy Director at the Kairos Center, Author for the Economic Policy Institute, coordinated and edited the Souls of Poor Folk: Auditing America report for the Poor People’s Campaign: A National Call for Moral Revival, working closely with the Institute for Policy Studies. \*\*Rev. Dr. William J. Barber II. \*\*Josh Bivens. \*\*Krista Faries. \*\*Rev. Dr. Liz Theoharis. “Moral policy = Good economics.” October 27 2021. https://www.epi.org/publication/moral-policy-good-economics/

Rising inequality is associated with slower overall economic growth and more persistent poverty. As shown in Figure D, EPI has estimated that if we had not experienced rising inequality since the late 1970s—if the fruits of our productivity had continued to be shared more broadly, as they were in previous decades—the poverty rate would have dropped to zero by the year 2000.13

**---[CHART OMITTED]---**

This is not the trajectory we have followed. Instead, poverty and economic insecurity have been allowed to grow alongside the concentration of wealth in fewer and fewer hands, with real consequences:

Families are hungry. In 2019, more than one in 10 U.S. households faced food insecurity at some point during the year, and households with children were even more likely to not know where their next meal was coming from. Food insecurity affects Americans of all races and ethnicities; however, white households faced food insecurity at lower rates (7.9 percent) than Black (19.1 percent) or Hispanic (15.6 percent) households.14

People’s health is sacrificed. A 2018 survey15 found that 87 million Americans had inadequate health coverage—they were either uninsured (roughly 24 million) or underinsured, putting them at risk for medical debt, onerous health cost burdens, and poor health outcomes, including deaths that could have been prevented.16 Most of these people are either unable to work or are in low-wage jobs that do not offer insurance and do not pay enough for workers to purchase insurance. They also disproportionately live in states that have refused to expand Medicaid. In 2019, 94 percent of those in the top 10 percent of wage earners—but only 24 percent of those in the bottom 10 percent of wage earners—had access to health insurance through their employer.17

Education is compromised. There are large gaps in educational achievement between children from the families with the fewest resources and those with the most. The strong relationship between income inequality and educational inequality perpetuates lack of opportunity, decreases social mobility, and “represents a societal failure that betrays the ideal of the ‘American dream.’ ”18

Safe, affordable housing is elusive for many families. More than 60 percent of workers do not earn enough to afford a two-bedroom rental home (with “affordability” defined as costing no more than 30 percent of income); the median wage is just barely sufficient for a one-bedroom rental.19 And there is no place in the country where a full-time worker earning the federal minimum wage comes even close to being able to afford a two-bedroom apartment.20

The sum total of these impacts is devastating: every year, approximately 250,000 people die from poverty and income inequality.21

This human tragedy goes largely ignored, which allows inequality to grow unchecked and does not make good economic sense. In today’s severely unequal economy, economic growth is slower, downturns are more severe and painful, and our economy fails to reach its full potential. When low-wage workers get a raise, they generally put that money right back into the economy, spending it on things their families need—which in turn supports jobs and economic growth. In contrast, high-wage workers are much more likely to save any extra dollars they receive.22

Maintaining this vastly unequal economy has costs. For example, the aggregate costs of child poverty, considering everything from child homelessness to crime and health costs to lost economic productivity, is estimated at $1 trillion per year.23 Similarly, barriers to full labor market participation and compensation for women and people of color were estimated at $2.6 trillion of our gross domestic product in 2019.24 But the full extent of such losses is impossible to quantify. Children lifted out of poverty and protected from its destabilizing effects are potential teachers, firefighters, health care workers, researchers, innovators, caring family members, good neighbors, loving parents, and engaged citizens. People performing valuable—but chronically underpaid—services, such as cleaning buildings, stocking grocery store shelves, and caring for elderly Americans, deserve to be paid fairly, to receive necessary benefits like sick leave, and to be protected at work; they should not live in poverty or near poverty, wondering how they will pay their rent and buy food or what will happen if they get sick. And everyone living in our society must have some adequate foundation of economic security if they are unemployed or to fall back on in times of crisis.

#### Record rates of quitting due to local concentration

Fowers & Rosenberg 10/22. Alyssa Fowers is a graphics reporter for The Washington Post; Eli Rosenberg covers work and labor for The Washington Post. "The geography of the Great Resignation: First-time data shows where Americans are quitting the most," October 22, 2021. Washington Post, https://www.washingtonpost.com/business/2021/10/22/states-labor-quitting-turnvoer-jolts/

Kentucky, Idaho, South Dakota and Iowa reported the highest increases in the rates of workers who quit their jobs in August, according to a new glimpse of quit rates in the labor market released Friday.

The largest increase in the number of quitters happened in Georgia, with 35,000 more people leaving their jobs. Overall, the states with the highest rates of workers quitting their jobs were Georgia, Kentucky and Idaho.

The report from the Bureau of Labor Statistics builds out a portrait of August’s labor market, with historic levels of people leaving jobs and a near-record number of job openings showing the leverage workers have in the new economy. It offers the first detailed insight into the state-by-state geography of this year’s Great Resignation.

“It is a sign of health that there are many companies that are looking for work — that’s a great sign,” said Ben Ayers, senior economist at Nationwide. “The downside is there are many workers that won’t come back in. And long term you can’t sustain a labor market that’s as tight as it is right now.”

Nick Bunker, an economist at the online jobs platform Indeed, said it was notable that more-rural states had the highest quit rates.

## Pharma DA

#### 3---Empirics.

Michael A. Carrier & Genevieve Tung 19. Professor of law at Rutgers Law School and an associate director of the Rutgers Law Library. “The industry that cries wolf: pharma and innovation.” <https://www.statnews.com/2019/09/26/innovation-boy-cried-wolf-pharma-industry/>.

But we write to raise a different point: Claims by big pharmaceutical companies (and the organizations they fund) that legislation addressing product hopping (or pay-for-delay settlements or sample denials) would harm innovation should be taken with a grain of salt. As HHS Secretary Alex Azar lamented, the industry incessantly claims that “if one penny disappears” from its profit margins, “American innovation will grind to a halt.” These “tired talking points,” he said, emerge each time Congress considers legislation affecting the industry.

The outcries trace back at least to 1961, when Eugene N. Beesley, the president of Eli Lilly, responded to the Drug Industry Antitrust Act (which sought to rein in high prices and impose licensing on drug manufacturers) before a subcommittee of the U.S. Senate. Speaking on behalf of the Pharmaceutical Manufacturers Association, Beesley warned that deletion of patent protection would “increasingly dilute the intense competition for superiority in discovery and manufacturing,” which would be “a tragic result in an area so vital to the public health.”

Even the landmark legislation that became the Hatch-Waxman Act was subject to industry threats that “you get what you pay for” and that if “Congress and the American public are unwilling to make a substantial investment in new drugs, they will get very little in return [and] innovation will dry up.”

The ominous warnings have continued ever since. Of the countless examples that could be offered, here are eight from the past 15 years.

In 2004, PhRMA claimed that modifications to the Hatch-Waxman Act “would undermine the act’s few critical protections for innovator [IP] rights,” leading to “less innovation [and] fewer new drugs to enhance treatment.”

In 2013, PhRMA criticized the House’s passage of the Innovation Act, which sought to curb the misuse of patent enforcement, voicing “concerns that it would undermine the ability of patent holders to enforce their rights, … potentially decreasing the value of patents and weakening incentives for innovation.”

Also in 2013, the president and CEO of PhRMA testified that European cost-containment measures “raise serious concerns” about EU member states’ “commitment to adequately reward innovation.”

Yet again in 2013, a PhRMA representative criticized legislation targeting pay-for-delay settlements since a presumption of illegality “would significantly undermine the value of patents that are the cornerstone of pharmaceutical innovation.”

In 2015, PhRMA worried that state legislation capping drug prices would “have a devastating impact on medical innovation.”

The same year, the organization referred to post-grant proceedings that allow patents to be reviewed as a “death squad” that “would impact our ability to develop new medicines that treat some of the most devastating diseases.”

In 2016, PhRMA lamented that the president’s FY17 budget mandating information disclosure would “undermine our competitive … incentives for innovation.”

And in 2019, PhRMA warned that “march-in rights” allowing the government to compel the granting of patent licenses if it funded some of the research would “jeopardize U.S. innovation.”

In the classic Aesop fable, the first two times the young shepherd cried wolf, the villagers came to help him. But after that, they stopped coming.

Big Pharma has cried Innovation Wolf every time Congress seeks to address its shenanigans. And the legislators keep coming to defend it. That has to stop. It is past time for the industry to be called to account on using its get-out-of-jail-free innovation card to avoid reasonable legislation.

As we get closer to the finish line of passing legislation addressing product hopping and other games, the cries about threats to innovation will grow louder and more urgent. But the industry’s history needs to be remembered. Consumers’ lives depend on it.

#### There’s no tradeoff in abandoning the consumer welfare standard and consumer welfare.

Michelle Meagher 21. A competition lawyer and Senior Policy Fellow at the University College London Centre for Law, Economics and Society. This paper has been prepared for the ABA Spring Meeting 2021 session on the consumer welfare standard. “Adaptive Antitrust.” 03-24-21. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3816662

(6) Consumers will suffer – It is argued that if we are to protect labour, the environment and so on, we must mean to sacrifice consumers. The **mechanics of this trade-off are less than obvious**. Consumer welfare, in its fullest sense, is **not antithetical to workers being paid well**, quite the opposite. But it is also **not clear that prices must rise if there is room for profits to fall**, and rising markups suggest that **there is such room**. Equally, from this we must conclude that **consumers are already suffering.** Reducing the responsibilities and excusing a lack of accountability on the part of dominant businesses to their other stakeholders will not help consumers.

#### 3---Mergers Link---Merger Guideline updates thump---bellweather for harsh enforcement.

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

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

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

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

I guess antitrust lawyers should settle in

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

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#### Biden executive order thumps.

Fraiser Kansteiner 21. A staff writer at Fierce Pharma. “With sweeping executive order, Biden puts drug pricing, anti-competitive strategies in the crosshairs” 07-12-21. https://www.fiercepharma.com/pharma/biden-order-puts-drug-pricing-anti-competitive-pharma-practices-crosshairs

President Joe Biden campaigned on the goal of lowering prescription drug costs. So far, those promises haven't amounted to much. But late last week, the president unveiled a **series of initiatives** taking aim at pricing, anti-competitive practices, and more. In an executive order penned Friday, Biden **doubled down on efforts to combat high prescription** **drug prices** in the U.S. by promoting generic and biosimilar competition, allowing Medicare to negotiate drug costs and more. Despite the administration’s lofty ambitions, it remains “far from clear” whether Biden’s goals will pan out, one antitrust and competition lawyer said.