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### Plan---1AC

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

### 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.

#### The plan solves inequality and wages.

Eric Posner 21. Professor at the University of Chicago Law School. “You Deserve a Bigger Paycheck. Here’s How You Might Get It.” https://www.nytimes.com/2021/09/23/opinion/antitrust-workers-employers.html

The spectacle of the antitrust challenge to Big Tech has been riveting. But a far more consequential transformation in antitrust law has largely escaped notice — the movement to use antitrust law to address wage suppression and inequality caused by the power of employers in labor markets. Economic theory says that when a pool of workers has only one potential employer, or a small number of potential employers, those workers will be paid below-market wages. Without the credible threat to quit and work for a competitor, workers lack leverage that could allow them to secure a raise and better conditions. This situation is sometimes called monopsony, and it is similar to monopoly in the market for goods. When buyers have no choice among sellers, a monopolist can charge high prices; when workers have little choice among employers, the employer can “charge” low wages. Monopolies result in sluggish economic growth as well as high prices because in order to raise prices, monopolists make fewer goods or provide less in services. Companies that use their market power to suppress wages do something similar: They hire fewer workers, and this leads to unemployment and low growth as well. And because employers push down wages by reducing employment, they supply fewer goods, causing higher prices to consumers even though labor costs are reduced. A business might have monopoly power (over goods it sells), monopsony power (over workers), both or neither. If a small town has one newspaper, the newspaper has both a monopoly over local news and a monopsony over journalists. If the town has a single automobile manufacturing plant, that business will have a monopsony over the relevant skilled workers but not a monopoly over cars, which are sold into a national market where there are competitors. Economists have understood these things since Adam Smith, who famously called wage-fixing by employers “the natural state of things, which nobody ever hears of.” But economists did not take this risk very seriously until recently, instead usually assuming that employers compete vigorously for workers. As a result, though the logic for using antitrust law to address market power is the same for monopsony as it is for monopoly, the legal community did not embrace the possibility that antitrust law should be brought to bear against employers, except in unusual cases. But in recent years, thanks to the remarkable work of a diverse group of mostly young economists, this conventional wisdom was shattered. Exploiting vast data sets of employment and wages that had become available, they discovered that concentrated labor markets — that is, with one or few employers — are ubiquitous. In one paper, José Azar, Ioana Marinescu, Marshall Steinbaum and Bledi Taska found that more than 60 percent of labor markets exceeded levels of concentration that are regarded as presumptive antitrust problems by the Department of Justice. Numerous papers have made similar findings. In highly concentrated labor markets, wages fall — as economic theory would predict. For example, Elena Prager and Matt Schmitt examined hospital mergers and found that when hospitals expand through mergers and gain significant market power, the wage growth of employees declines. Notably, this decline affected skilled health care professionals like nurses — but not administrators and unskilled staff members like cafeteria workers, who could easily find jobs outside hospitals. The work on labor market concentration has been supplemented by growing evidence that employers collude with one another and engage in other anticompetitive practices. Evan Starr and his co-authors have found that agreements not to compete — where employers block workers from moving to competitors — are extremely common (as many as nearly 40 percent of workers have been subject to one) and are associated with lower wages. Alan B. Krueger and Orley Ashenfelter found that nearly 60 percent of major brand-name franchises — companies like McDonald’s and Jiffy Lube — subjected franchise employees to no-poaching agreements, which prevented them, even within the same franchise system, from quitting one employer to join another. As a result, many workers, especially in rural areas and small towns — areas subject to high unemployment and economic stagnation — are squeezed by employers and underpaid. For example, when farm equipment manufacturers merge, they close dealerships, and so a mechanic who used to be able to get a good job as several dealers competed for his work must accept a less-appealing job from the single place in the area or drop out of the labor market. Antitrust law applies to “restraint of trade,” and courts agree that when employers enter cartels to suppress wages, they violate the law. Yet until a few years ago, there were hardly any antitrust cases against employers. The major exception was a 2010 case against Big Tech after Google, Apple and other companies agreed not to solicit one another’s software engineers. This was potentially criminal behavior, but the Justice Department slapped them on the wrist. (A subsequent lawsuit secured more than $400 million in damages for the workers.) But it was the academic research, not the tech case, that finally woke the antitrust community from its torpor. In the past year, the Justice Department has brought several criminal indictments against employers for antitrust violations (the first ever). The Federal Trade Commission is pondering a rule to restrict noncompetes. State attorneys general brought cases against franchises and other employers that used no-poaching agreements and noncompetes. Congress is holding hearings next week on antitrust and the American worker. Private litigators have joined in as discoveries of abusive wage practices have piled up. For example, “Big Chicken” companies face lawsuits not only for fixing the prices of chicken but also for fixing the wages of their workers. If the academic research on labor markets is correct, then millions of Americans are paid thousands or even tens of thousands of dollars less than they should be paid. Labor monopsony affects people at all income levels, but it is a particular problem for lower-income workers and people living in stagnant rural and semirural parts of the country. In his recent executive order on antitrust, President Biden became the first president to commit government resources to ensure that the antitrust laws are used to help workers. Let’s hope he follows through.

#### Worker welfare is key.

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

Most of the principles naturally carry over, in suitably modified form, to the analysis of merger effects on labor markets, though a few subtle issues arise. Many of the same factors that could act as efficiencies on the product side are also efficiencies on the labor side. By analogy to the “consumer welfare” standard, we believe that **mergers that trigger scrutiny by reducing** **labor market competition** should be subject to a “**worker welfare” standard**.213 The fact that the merger might raise firm profits more than it harms workers **should not be sufficient to excuse the merger**. Instead, the merger would be permitted if the merger sufficiently increases worker productivity (workers’ marginal revenue product) in a way that will not fully be absorbed by lower prices or increased employer profits. Thus, harms from reduced competition are more than fully offset, and **therefore workers’ wages, benefits, or conditions will improve because of the merger.** This is not to say that mergers that harm workers should never be approved. The losses to workers could be offset by gains elsewhere in the economy. Indeed, the merger of two firms that operate in a frictionless labor market should not greatly harm workers even if it does result in significant layoffs, because in a competitive labor market **the laid-off workers can easily find equally good jobs.**214 In contrast, a merger that does create competitive concern should not be excused simply on the basis that it **allows the firm to cut costs by destroying jobs**. In such cases, antitrust doctrine does not allow efficiency gains in other markets to offset losses in one market.215 Thus, typically, **the worker-surplus implications of a merger will indicate its competitive effects**, just as in product markets consumer surplus is a strong but not perfect proxy for competitive effects. In some cases, a merger may **prove overall competitively harmful in labor markets** (thus **reducing worker welfare**) and beneficial in product markets (thus increasing consumer welfare). Such cases should be treated roughly like ones where competitive harm occurs in one product market but there are competitive benefits in another product market. To the extent possible, antitrust authorities should try to find remedies that address the competitive harms while preserving the benefits, such as requiring the spinning off of critical units that would allow an increase in market power. However, **the frequency of such cases should not be exaggerated**; mergers that increase labor market power and thus raise effective costs will not usually bring lower prices to consumers, and mergers increasing product market power and thus reducing sales will not typically create great jobs. As we noted in section I.A.3, enforcers should **not believe** the canard that the monopsonist’s lower labor costs are **passed on to consumers as lower prices**.216 Monopsony power raises the effective marginal cost a firm faces and thus should almost always lead to increased prices. Similar analysis applies to the merger-specificity of the efficiency gains: productivity gains that could be achieved absent the anticompetitive effects of the merger should not play a role in merger analysis.

#### 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.

#### 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.

### Democracy---1AC

#### Advantage 2 is democracy:

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

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

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

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

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

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

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

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

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

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

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

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

#### Judicial activism undermines respect for rule of law and usurps democracy.

Jane S. Schacter 17. William Nelson Cromwell Professor of Law at Stanford Law School. “PUTTING THE POLITICS OF “ JUDICIAL ACTIVISM” IN HISTORICAL PERSPECTIVE”. The Supreme Court Review Volume 2017. https://law.stanford.edu/wp-content/uploads/2019/03/Jane.S.Schacter-Putting-the-Politics-of-Judicial-Activism-in-Historical-Perspective-2018.pdf

In 1980, as issues associated with the religious right rose, Republican rhetoric began to emphasize the idea that Democrats had shunted the family aside and “given its jurisdiction to the courts,” along with a call for judges who “respect the traditional family and the sanctity of innocent human life.”170 By 1984, when Ronald Reagan ran for reelection, Republicans offered a more fully elaborated set of institutional ideas about courts, arguing that: judicial power must be exercised with deference towards State and local officials; it must not expand at the expense of our representative institutions. It is not a judicial function to reorder the economic, political, and social priorities of our nation. The intrusion of the courts into such areas undermines the stature of the judiciary and erodes respect for the rule of law. Where appropriate, we support congressional efforts to restrict the jurisdiction of federal courts.171 The platform went on to “commend the President for appointing federal judges committed to the rights of law-abiding citizens and traditional family values,” “shar[ing] the public’s dissatisfaction with an elitist and unresponsive federal judiciary,” and calling for judges committed to “judicial restraint.”172 The language in George H. W. Bush’s 1992 acceptance speech marked the appearance of particular language about judicial activism that became common in GOP platforms and speeches thereafter. He said that Bill Clinton would “stock the judiciary with liberal judges who will write laws they can’t get approved by the voters.”173 By 1996 and the Dole campaign, the anti-activism rhetoric in Republican platforms was ramping up. At the same time, although no court had yet legalized same-sex marriage, the possibility of that result had been introduced by the Hawaii Supreme Court in a preliminary decision in 1993,174 and the Republican Party began to fold same-sex marriage into its portfolio of complaints about judicial activism. In 1996, for example, the platform applauded congressional passage of the Defense of Marriage Act, noting that it would prevent “federal judges and bureaucrats from forcing states to recognize other living arrangements as ‘marriages.’”175 Since 1996, references to same-sex marriage in relation to judicial activism have been a mainstay for Republican platforms. The 1996 platform also quoted the Tenth Amendment and said “[f]or more than half a century, that solemn compact has been scorned by liberal Democrats and the judicial activism of the judges they have appointed.”176 It admonished that: The federal judiciary, including the U.S. Supreme Court, has overstepped its authority under the Constitution. It has usurped the right of citizen legislators and popularly elected executives to make law by declaring duly enacted laws to be “unconstitutional” through the misapplication of the principle of judicial review. [These actions are] fundamentally at odds with our system of government in which the people and their representatives decide issues great and small.177 The sharper tone of 1996 has been maintained ever since. Succeeding platforms have argued, for example, that “scores of judges with activist backgrounds in the hard-left now have lifetime tenure” (2000 and 2004);178 the President should “name only judges who have demonstrated respect for the Constitution and the processes of our republic” (2000);179 “the sound principle of judicial review has turned into an intolerable presumption of judicial supremacy” (2004);180 “[j]udicial activism is a grave threat to the rule of law because unaccountable federal judges are usurping democracy, ignoring the Constitution and its separation of powers, and imposing personal opinions upon the public . . .” (2008);181 “judicial activism” is a “threat to the constitution” and “Republican Senators [must] do all in their power to prevent the elevation of additional leftist ideologues to the courts” (2012);182 and, most recently, the activist judiciary is a “critical threat to our country’s constitutional order,” and “only Republican appointments will enable the courts to begin to reverse the long line of activist decisions, including Roe, Obergefell and the Obamacare cases,” which have “expanded the power of the judiciary at the expense of the people and their elected representatives” (2016).183

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

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

3. Implications for Interpretation

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

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

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

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

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

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

#### Democracy solves great power war.

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

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

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

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

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

### FTC---1AC

#### Advantage 3 is the FTC:

#### Khan is advocating for the aff but is 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

#### The CWS means they’ll lose cases on labor they’re bringing now.

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.

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

Marianela Lopez-Galdos 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 fraud 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.

#### Fraud funds terrorists.

Frank S. Perri 10. Frank S. Perri, J.D., CFE, CPA. "The Fraud-Terror Link:". No Publication. xx-xx-xxxx. 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

#### Causes extinction---nuclear escalation.

Matthew Bunn & Nickolas Roth 17. \*Professor of practice at the Harvard Kennedy School. \*\*Research associate at the Belfer Center’s Project on Managing the Atom at Harvard University and research fellow at the Center for International and Security Studies at the University of Maryland. “The effects of a single terrorist nuclear bomb.” Bulletin of the Atomic Scientists, http://thebulletin.org/effects-single-terrorist-nuclear-bomb11150

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

#### 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:

### Solvency---1AC

#### Solvency!

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

Eric A. Posner 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.

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

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

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

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

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

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

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

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

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

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

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

#### Prioritizing worker welfare solves inequality

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

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

# 2AC

## Democracy

### AT: Court Clog

#### Backlogs were bad before the pandemic and they are only getting worse now.

Jon Robins, 10-22. Jon is editor of the Justice Gap. He is a freelance journalist. Journalism lecturer at Winchester University and was a visiting senior fellow in access to justice at the University of Lincoln. He is twice winner of the Bar Council's journalism award and won Halsbury Legal's journalism award. “Courts backlog increasing before pandemic and will be a problem ‘for years to come’.” October 22, 2021. https://www.thejusticegap.com/courts-backlog-increasing-before-pandemic-and-will-be-a-problem-for-years-to-come/

The backlog in the Crown Court has increased a further 48% since the onset of the pandemic, according to the spending watchdog which reported that it had increased by 23% in the year before lockdown. The National Audit Office (NAO) reveals that victims, witnesses and defendants are now waiting longer for their cases to be heard as the number of cases older than a year increased exponentially from 2,830 to 11,379 (302%). The Lord Chief Justice suspended jury trials in lockdown between 23 March and 18 May last year. Between March last year and June this year, the Crown Court backlog increased from 41,045 to 60,692 cases. ‘Despite efforts to increase capacity in criminal courts, it looks likely that the backlog will remain a problem for many years,’ said Gareth Davies, the head of the NAO. ‘The impact on victims, witnesses and defendants is severe and it is vital that the Ministry of Justice works effectively with its partners in the criminal justice system to minimise the delays to justice.’ The MoJ and Court Service had ‘a poor understanding of the impact the pandemic and recovery programme have had on court service users from ethnic minorities and vulnerable groups’, the watchdog said. The NAO found there had been ‘slow progress’ in evaluating how vulnerable users had been affected by, for example, remote access to justice. There was also ‘no evidence’ that the MoJ had any data on users’ ethnicity Cases in the backlog in June had been waiting an average of 230 days, 84 days (57%) longer than cases in the backlog at the start of lockdown. ‘Delays could mean more victims and witnesses withdraw from the process, increasing the likelihood of cases collapsing,’ says NAO. ‘In September 2020, the government temporarily extended the maximum time limit a defendant could be held before trial by 56 days. Between 31 March 2020 and 30 June 2021, the number of people held on remand in custody increased by 27% at a time when the prison population declined by 6%.

#### Courts already clogged – Capitol riots, previous backlogs, covid

Samantha Hawkins, 10-19. Court House News writer, “Capitol rioters face trial delays caused by court backlog, mass of evidence.” October 19, 2021. https://www.courthousenews.com/capitol-rioters-face-trial-delays-caused-by-court-backlog-mass-of-evidence/

An overwhelmed court is clogged with 671 — and counting — Jan. 6 defendants and a mountain of discovery amidst Covid-19 restrictions. Getting these cases to trial quickly appears unlikely. The government used this photo of Paul Johnson pushing over police barricades in their case against him for his role in the Jan. 6 Capitol riot. (Image via Courthouse News) A federal judge acknowledged on Tuesday that there could be constitutional problems with the length of time that Capitol rioters have to wait for their trial, as the mass of discovery from the Jan. 6 insurrection is enormous and growing by the day. “We are working in a discovery no man’s land,” defense attorney Kobie Flowers told U.S. District Judge Paul L. Friedman regarding his client, Paul Russell Johnson. Flowers filed a motion for Johnson’s case to be severed from his co-defendant, Stephen Randolph, since a joint trial would take too long, and he is worried that Randolph’s more serious crimes could lead the jury to erroneously convict Johnson. Johnson, of Virginia, and Randolph, from Kentucky, toppled over a police barricade on Jan. 6, causing an officer to fall backwards and suffer a concussion. Randolph then climbed over the metal barricade and began attacking another law enforcement officer, while Johnson pushed more barricades to the ground so the mob could proceed. “It was fucking fun,” Randolph told the FBI agents who came to his work. Flowers argues that the government erroneously claimed that Johnson was a member of the right-wing militia group the Three Percenters, and Johnson has no way to clear his name without going to trial. But Johnson has been waiting, and will most likely be kept waiting, due to the sheer volume of rioters that are overwhelming the federal court in Washington. If his case is tied up with Randolph’s, who he does not know, it will take even longer. “Instead of choosing a smarter way to deal with the root causes that allowed for the events of Jan. 6, 2021, the government chose, in the age of mass incarceration, to charge over 500 people without a plan to respect the Sixth Amendment’s right to a speedy trial for the accused,” Flowers said in his motion to sever. Friedman pushed back against this argument, saying that the Justice Department and the FBI couldn’t have possibly waited to gather all of their evidence before they started to make arrests. “We have 671 cases that have common discovery, and it comes from so many different sources — governmental and non-governmental,” he said. “We are also in the age of social media and people say ‘I was on defendant X’s Facebook page and he's’ a relative of mine or he’s the neighbor down the street, and I was surprised that I saw him in the video,’ and they become part of the discovery, The mass of discovery is huge.” But, the Bill Clinton-appointed judge also acknowledged that the defendants can’t wait around for the government to collect all of the evidence before they get a trial. “You can’t sit around forever and wait for every piece of discovery and every video from a million different sources, when some of it is only tangentially relevant. But you can’t assume it's only tangentially relevant,” Friedman said. “We may review all of this stuff and say some of it is exculpatory. But it has to end at some point.” Friedman also acknowledged that in addition to the sheer number of defendants and the astronomical volume of discovery, Covid-19 has played a large role in slowing down the court system and pushing trial dates further and further out. Cases were already backed up prior to Jan. 6, because of the pandemic. “We are trying to be reasonable,” Flowers said. “We just want to put a trial date in the calendar, recognizing that the date could change. To have no trial date, and simply to be working in a discovery no man’s land, well, it’s a constitutional problem.” Jan. 6 cases more than doubled the total number of new criminal cases filed in the U.S. District Court in the District of Columbia all of last year, and only 104 defendants have taken guilty plea deals so far. U.S. District Judge Amit Mehta has also commented on the growing mountain of evidence and the increasing waiting period for a trial, guessing that the trials for the larger Jan. 6 cases won’t be until 2023. ““I have to keep their interests in a speedy trial in mind here,” Mehta said in a hearing last month. “I am concerned about a lengthy pretrial detention period,” Friedman declined to rule on Flowers’ motion, saying that he would rather hold it in abeyance until the parties discuss how to proceed — and maybe even set a trial date. Earlier on Tuesday, Kevin Loftus pleaded guilty to one count of unlawful picketing. The Wisconsin man posted a photo of himself smiling and holding an American flag inside the U.S. Capitol on Facebook, with comments, “That’s right folks some of us are in it to win it” and “I am wanted by the FBI for illegal entry.” Loftus faces up to six months in prison.

#### Major antitrust cases settle quickly, the court cases won’t last long/clog the courts.

William Berkowitz et. al, 21. Berkowitz is Partner and National Chair, Antitrust & Competition Practice Group. Brandon Bigelow is Partner and National Co-Chair, Antitrust & Competition Practice Group and Alison Eggers is Partner, Antitrust & Competition and Franchise & Distribution Practice Groups. “Key Trends in Commercial Litigation: Antitrust.” Commercial Litigation Outlook 2021, p. 8, https://www.seyfarth.com/dir\_docs/publications/Commercial-Litigation-Outlook-2021-Edition.pdf

Companies in all sectors should expect that the FTC and DOJ may give more scrutiny to transactions that in the past might have easily cleared HSR review. Finally, the parties in a number of major antitrust class action litigation matters reached settlements in 2020, including matters involving alleged price fixing in the packaged seafood market and collusion among various Blue Cross/Blue Shield insurance providers to suppress competition between those plans. Businesses are often members of these certified classes, and given the volume of their purchases in these markets, often can recover substantial sums from these settlement funds. Businesses should be on the lookout for court-ordered notices concerning these settlements to make sure they do not waive any rights. Businesses also should be skeptical of companies that offer to “assist” with the submission of claims; these companies often demand a substantial percentage of any recovery for their work, even though settlements are typically designed to make claims submission easy.

#### Antitrust is a mess with no clear purpose or transparency---reforms that reorient the focus of antitrust create clarity

Gibney 19. Knowledge at Wharton is the school’s online business analysis journal. Bruce Cannon Gibney worked as a litigator, investor, and writer in the tech sector. "Dysfunctional Justice: What’s Wrong with the U.S. Legal System." Knowledge@Wharton Interview with Bruce Cannon Gibney. 7-12-2019. <https://knowledge.wharton.upenn.edu/article/dysfunctional-justice-whats-wrong-with-the-us-legal-system/> \*brackets in original text

Knowledge@Wharton: Where and why has **the legal system failed us**?

Bruce Cannon Gibney: The reason I wrote the book is, when I was a litigator, everything made a narrow sort of sense. I was out there to win a case, there were rules, and I just trundled along. Then I became a client and realized you could never get a straight answer to any question worth asking. That’s a different perspective. That’s the perspective that 322 million Americans have, and it’s totally unacceptable. The law needs to be able to answer basic questions like, “Where can I put my toilet during a remodel? Is this person an independent contractor, an employee?” It doesn’t. Everything is, “It depends based on some obscure factual test with 45 different prongs.”

Even the “it depends” is farcical because what it actually depends on is discretion exercised by the executive branch, including the bureaucracies that report to the executive. **The reason why is that the law has just bloated out of control. There are 50,000 rules for everything. Because they can’t all be applied evenhandedly, the only way they’re applied is that the executive, the enforcer, gets to decide who’s going to be punished for what.**

It’s a pick-and-choose system. This leads to everything from spotty and somewhat arbitrary regulation for businesses to the qualitatively different experience of things like  [incidents of] police brutality and what have you. It’s all a product of the law’s failure to understand itself and to know what it’s trying to achieve.

Knowledge@Wharton: In your experience as a venture capitalist, how has this failure by the legal system affected tech companies?

Gibney: **The real impact is coming down the pike over the next five to 10 years**. For a long time, we really hoped in Silicon Valley that we could just ignore Washington. We discovered that wasn’t true. The law reaches everything. It reserves the right to touch anything it wants. One of the most frustrating things is most businesses want to do the right thing. It can be very difficult to know what the law considers to be the right thing. Sometimes **the law pursues self-defeating policies**, in part because the constituent parts of the law — Congress, the bureaucracies, the prosecutors and the judiciary — don’t really understand each other and how each other works. They don’t understand the public and the industries they’re supposed to regulate, so you see these counterproductive, counterintuitive outcomes.

There is a narrative now that we don’t want companies to be too big, and we don’t like that companies are staying private forever and doing whatever they want, unaccountable to the public markets. But it was the law — when it changed about a decade ago to expand the de facto public company rule, which let companies stay private forever — that encouraged private companies to stay that way. **So, you’ll find that one part of the law does one thing and thinks it’s fixing one problem, and it ends up blowing up something else. Then the law tries to fix that problem and creates two more. It becomes a hydra-headed monster, where really no one knows what’s supposed to be achieved or how to do it.**

**I think the way that all this is going to play out over the next couple years is in antitrust. It will be in privacy and in financial regulation, which is increasingly moving into the tech sector as you move into virtual banking and so forth**. And I don’t think the law is going to do a particularly good job. I just base that on the past 80 years of it not having done a very good job at regulating. **It doesn’t understand all the industries it wants to regulate.**

Because the bureaucracies write the rules and report to the executive, this isn’t supposed to be the case. But, in fact, that introduced an enormous amount of policy volatility between administrations. As a business person, I’d rather have a rule that’s slightly not great but completely consistent than to oscillate every year between a rule that’s wonderful, then one that’s terrible, and then one that is TBD. That’s deeply unhelpful for businesses.

I don’t think that the climate is particularly good. We all want to be pro-consumer. That’s ultimately the goal for all companies: They’re pro-consumer even if their consumers are other businesses. The law gets in the way of that, even though the law itself is supposed to be pro-consumer. We saw this recently with the [Apple v. Pepper](https://www.scotusblog.com/case-files/cases/apple-v-pepper/) decision, which was the antitrust case that came down from the Supreme Court. **The goal of antitrust law has never been entirely clear. This is about the size of the company, it’s about the price the consumer pays, it’s about some amorphous power that people are exercising. But in the end, they were trying to benefit consumers. I’m not sure if this decision will benefit consumers. I think it will take away a lot of the value that Apple brings to its consumers, which is ease and security.**

Knowledge@Wharton: Do you believe some of these problems with the clarity and transparency of the law can be corrected?

Gibney: Every businessman is essentially an optimist, right? You go out and think that you can make a profit. I’m going to be optimistic and say that they can be corrected if the legal system reforms itself. I just don’t think the legal system, in its current incarnation, is capable of doing everything that we’d like it to do. I don’t think it can make rules all that sensibly. I don’t think it can make stable rules. I don’t think the various parts of the legal system understand each other. **I think one of the things that’s most underappreciated about the legal system is that each part of the legal assembly line really has no idea what the other one is doing, nor do they understand what the end product is supposed to be.**

## FTC

### AT: Turn

#### The FTC is restructuring merger enforcement to consider monopsony power---absent guidance, DOJ fracturing and uncertainty undermine those efforts.

Neely B. Agin, et al. 10/2. \*\*Partner at Winston & Strawn LLP, focuses on antitrust, has steered hundreds of transactions through the U.S. and global merger control review process. \*\*David Dahlquist, Co-chair of Winston & Strawn LLP’s Health Care & Life Sciences Group. \*\*Richard L. Falek, lead antitrust counsel at Winston & Strawn LLP. \*\*Conor A. Reidy, lawyer at Winston & Strawn LLP. \*\*Lucas W. McFarland, lawyer at Winston & Strawn LLP. “United States: FTC Broadens Scope Of Considerations In Merger Reviews.” October 2 2021. https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1116932/ftc-broadens-scope-of-considerations-in-merger-reviews

In her September 28 blog post, Vedova announced that future Second Requests issued by the FTC may include requests for information regarding how the proposed transaction "may affect labor markets, the cross-market effects of a transaction, and how the involvement of investment firms may affect market incentives to compete." Indeed, reporting already indicates that parties received questions from FTC staff regarding unionization, environmental issues, and corporate governance practices prior to the September 28 announcement. Pursuing such lines of inquiry marks a departure from decades of U.S. antitrust merger enforcement under administrations of both parties.

Under existing precedent and agency practices, the DOJ and FTC analyze whether a proposed transaction likely will harm consumers, namely by higher prices or reduced output or quality. Vedova's September 28 announcement makes clear that the FTC may consider a broader set of possible harms when investigating whether a proposed transaction is likely to substantially lessen competition under the antitrust laws. Such theories of harm are consistent with FTC Chair Lina Khan's longstanding critique in her academic writings that the DOJ and FTC have historically ignored what she views as harms of increased concentration that go beyond price effects, as well as President Biden's comprehensive Executive Order on Promoting Competition in the American Economy, which suggested that the FTC and DOJ consider the effects of proposed transactions on labor markets. (See here for a discussion of the complications associated with assessing the effects of a merger on labor markets.)

Absent further guidance, it is unclear how the FTC will assess whether a proposed transaction is unlawful under these theories of harm, making it difficult for businesses considering transactions and the attorneys advising them to determine whether a particular transaction is likely to draw scrutiny from the FTC. Further, unless the DOJ adopts a similar framework, the FTC's application of these novel theories of harm may further bifurcate the U.S. merger review process. Typically, whether the DOJ or FTC reviews a particular transaction depends largely on which agency has greater experience in a particular industry. Although the process by which each agency reviews a proposed transaction differs based, in part, on its statutory authority (particularly if the reviewing agency seeks to block the transaction), the substantive standards applied by each agency have largely been the same. As a result, whether it is the DOJ or FTC that reviews a transaction has not generally been seen as outcome determinative. Vedova's announcement, however, makes clear that the FTC is charting a new course and will begin scrutinizing aspects of a transaction previously not considered by either agency during a merger review. What standards the FTC will apply to assess these novel theories of harm—and whether the DOJ will follow suit—is unclear.

#### Losers lose---defeats crush authority and demoralize staff.

David Mclaughlin 21. Reporter @ Bloomberg "Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts". Bloomberg. 6-23-2021. https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

## Cap K

### Cap K---Core---2AC [S]

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

Mark Budolfson 21. PhD in Philosophy. Assistant Professor in the Department of Environmental and Occupational Health and Justice at the Rutgers School of Public Health and Center for Population–Level Bioethics "Arguments for Well-Regulated Capitalism, and Implications for Global Ethics, Food, Environment, Climate Change, and Beyond". Cambridge Core. 5-7-2021. https://www-cambridge-org.proxy.library.emory.edu/core/journals/ethics-and-international-affairs/article/arguments-for-wellregulated-capitalism-and-implications-for-global-ethics-food-environment-climate-change-and-beyond/96F422D04E171EECDEF77312266AE9DD

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

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

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

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

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

Arguments for and against Forms of Capitalism

The Argument against Capitalism

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

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

The Argument for Well-Regulated Capitalism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Rose cites Dardot and Laval's thesis of revolution---asserts revolution from "mass politicization" of society with zero warrant---Emory reads blue.

Nick Rose 21. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

## Multilat CP

### Multilat CP---Core---2AC

#### Say no---won’t take sovereignty losses.

Bruno Bastos Becker 16. Associate of the Competition Practice at Barbosa, Müssnich & Aragão Advogados. Revista Do Ibrac Volume 22 - Número 1- 2016 Prêmio Ibrac - Tim 2015 “Decentralized Globalization: Possible Solutions for Multiple Merger Control Regimes in Cross-Border Transactions”. https://d1wqtxts1xzle7.cloudfront.net/52329387/SSRN-id2926207.pdf?1490635488=&response-content-disposition=inline%3B+filename%3DDecentralized\_Globalization\_Possible\_Sol.pdf&Expires=1633221921&Signature=AdZzigmFmDWzAJDsFfwmed9N0wgp7JMqh1Z7XUAIxb2ocUtkMJLFCwRj4NslBFsxzWeYwJ~gkHQm0Zb22NuvJwQzbnHnUMGlXzDXdujTXsxQFyE4fSapKDT9lbk2uWrYgrCBMfw0sli1tKJPOQsVlVyeKiSWoFIfkj5M9wQaGyLoucnRYm~66PajYX~ureUvwk~kMFcr4wNpXWCO~reag8ObhcgUhRDwNB34iNJF4Z08o4VGIOwP4CqvSs1VV3gIY4-rLKazwWkwkWHj1hK11yy3~HRWtDevXLzli8qGpvvc7Z8KKEA~nj-6HTtMX7Ps9nHZZJZVQW-lNK4fXHrCow\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

Over the last decade, several scholars have proposed different solutions for the problem of the decentralized globalization. However, none of the efforts resulted in a cohesive merger control system41. One of the main reasons is that merger policy is strongly related to industrial policy and, therefore, countries have rejected the possible loss of sovereignty42

---FOOTNOTE 42 STARTS, MIDPARAGRAPH---

42 “Because merger policy is usually closely linked to industrial policy, nowadays most countries are not ready to relinquish part of their sovereign rights in this area in order to support some sort of international merger policy, negotiated and implemented at a multilateral level. Therefore, absolutely no agreement on substantive rules to tackle mergers, not even in the form of «rule of reason» guidelines, seems to be foreseeable at international level in the near future”. (MONTINI, Massimiliano. Globalization and International Antitrust Cooperation. International Conference Trade and Competition in the WTO and Beyond. 1999. p. 18 Available at: http://www.feem.it/userfiles/attach/Publication/NDL1999/NDL1999-069.pdf)

---FOOTNOTE 42 ENDS, PARAGRAPH CONTINUES---

that is part of the main proposals so far. Furthermore, as pointed out by Jörg Terhechte, there are many differences between authorities that must be taken into account for the designing of a possible solution, like financial and personal resources, composition at the decisional level, independence, accountability43

#### Only the plan solves the current meaninglessness of US international negotiations---demonstrates the US will deliver.

Stephen M. Walt 19. A columnist at Foreign Policy and the Robert and Renée Belfer professor of international relations at Harvard University. “America’s Polarization Is a Foreign Policy Problem, Too” Foreign Policy. 03-11-19. https://foreignpolicy.com/2019/03/11/americas-polarization-is-a-foreign-policy-problem-too/

Partisan politics, one sometimes still hears, are supposed to “stop at the water’s edge.” Domestic political quarrels might be intense and occasionally personal, but Americans are supposed to temper their disagreements and link arms when dealing with the outside world. This notion was always a bit of an exaggeration—if not an outright myth—even in the heyday of the fabled “Cold War consensus.” The supposed need to suppress partisan differences didn’t prevent nasty accusations about “who lost China?” in the 1940s and early 1950s, along with angry debates over the war in Korea, the broader phenomenon of McCarthyism, the supposed “missile gap” of the late 1950s, or the deep divisions that emerged during the Vietnam War. Nor do I recall a lot of bipartisan restraint in the late 1970s—when Republicans attacked former President Jimmy Carter over everything from Iran to the Panama Canal—or the 1980s, when Democrats accused former President Ronald Reagan’s administration of a cavalier approach toward nuclear war and giving illegal support to right-wing death squads in Central America. Moreover, too much consensus can be as harmful as deep disagreement. If the foreign-policy elite becomes wedded to a bunch of bad ideas and to a flawed grand strategy, the result is likely to be a protracted series of failures. You know: like the past 25 years. That said, there’s no question that the United States is at a level of political polarization unseen for many decades. Most of the attention to this phenomenon has focused on its effects on America’s internal politics, and some observers are clearly worried that the core institutions of the country might be at risk—understandable, given President Donald Trump’s open hostility towards some of these institutions, his apparent fondness for authoritarians, and the emergence of something resembling “state media” (i.e., Fox News). Less attention has been paid, however, to the impact that hyperpolarization could have on U.S. foreign policy. Apart from an excellent essay by Ken Schultz of Stanford University, this topic just hasn’t received a lot of attention. But it should. How might **excessive polarization**—where members of a society increasingly cluster into separate “tribes” sharing political beliefs with each other, but not with members of the opposing group—**undermine foreign policy?** Granting that a degree of disagreement is both unavoidable and often desirable, how might such divisions get out of hand and begin to damage America’s ability to interact with the outside world sensibly and successfully? We should begin by recognizing that today’s level of polarization may be partly a reflection of America’s privileged international position. Once the Soviet Union collapsed and left the United States at the pinnacle of power, the need for national unity declined and ambitious politicians had less need to show restraint in attacking their political rivals. As Michael Desch argued in a seminal article, states facing serious national-security challenges tend to be stronger and more unified, whereas those in a benign international environment are prone to grow more fractious. America’s trajectory since 1992 fits Desch’s argument quite well, notwithstanding the brief surge of patriotic feeling that followed the 9/11 terrorist attacks. To put it bluntly: Because the United States was now so safe and secure, politicians felt they could sow division at home without worrying too much about weakening the country abroad. Unfortunately, one negative impact of excessive polarization is a decreased ability to do the things that can keep the country on top for a long time. If polarization prevents the federal government from taking effective action on climate change, decaying infrastructure, the opioid epidemic, primary education, financial regulation, the deficit, or any number of other problems, America’s long-term position of power could erode and leave the country less able to handle future foreign-policy challenges. Morever, as Schultz notes, polarization leaves the country more vulnerable to outside interference, as Russia’s efforts to interfere in the 2016 election illustrate. We still don’t know exactly what Moscow did and what effects it ultimately had, but it is clear that at a minimum, Russia sought to exploit and exacerbate internal divisions that already existed. And this sort of thing can rapidly become self-reinforcing, as opposing sides leap to accuse each other not just of bad judgment but of being actively disloyal. This sort of thing is not unprecedented in U.S. political history: In the early days of the republic, Hamiltonians accused Thomas Jefferson of being overly sympathetic to revolutionary France, while Jeffersonians believed Hamilton to be a closet monarchist with a poorly disguised sympathy for Great Britain. It did not take much for either group to see the other as more than misguided. Schultz also points out that **polarization threatens a nation’s ability to reach agreements with other countries.** It is no accident that presidents have come to rely more and more on executive agreements rather than formal, ratified treaties: It has become increasingly difficult to get the latter through a divided Congress. Of equal concern is the possibility that other states will be wary of making mutually beneficial agreements with the United States, simply because they have no way to be sure whether an agreement reached this year will survive the next election. People who think U.S. interests are best served by avoiding international agreements and maximizing the country’s freedom of action (e.g., John Bolton) might welcome such a situation, but this view is dangerously shortsighted. The United States has benefited greatly from a host of past agreements of various types, and it makes no sense to encourage other states to have less and less confidence in the value of U.S. pledges. Nobody expects the United States to act contrary to its interests, but **how can it expect other countries to do something** it wants in exchange for something they want, **if they have no way of knowing whether it will deliver?** Indeed, the problem of inconstancy may be even worse than Schultz suggests. Once foreign policy begins to oscillate between two increasingly divided factions, each of the groups has an incentive to pursue its most **ambitious, controversial, or extreme projects** whenever it happens to be in a position of power. Not only does the pendulum oscillate with greater frequency, the swings themselves become more extreme. Another cost of polarization is the **erosion of America’s broader image** for competence and **good sense**. The more bitter, divided, gridlocked, venal, and downright stupid American politics become, the less appealing the American system of government is to outside observers. When that happens, the country’s moral voice—already compromised by foreign-policy excesses—gets reduced to a whisper. I mean, seriously: What sensible foreign country would listen to an American telling it how to organize a government, write a constitution, root out political corruption, or hold officials accountable, when the U.S. system itself seems increasingly broken and the political ecosystem is populated by unprincipled popinjays, corrupt con men, habitual liars, and senior officials whose chief skill is failing upward? When a nation’s politics are sufficiently polarized, the worst people can still find safe sinecures within their tribe. Yeats got it exactly right: “The best lack all conviction, / While the worst are full of passionate intensity.”

## States

### States CP---Core---2AC

#### CP’s preempted---the NLRA forbids state labor action.

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

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

#### Fails absent the aff---the DOJ and FTC undermine states.

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

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

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

## Politics

### AT: Reconciliation---Won’t Pass---2AC

#### Won’t pass- Biden not pushing, distrust, VA election

Heather Caygle et al 10-29-2021, with SARAH FERRIS and OLIVIA BEAVERS "Weary Dems keep reliving Infrastructure Week," POLITICO, https://www.politico.com/news/2021/10/29/democrats-infrastructure-week-517487

House liberals left the Capitol triumphant on Thursday night after once again scuttling a major vote. Every other Democrat was fuming.

For the second time in less than a month, Speaker Nancy Pelosi and her leadership team had to delay a vote on Senate-passed infrastructure bill amid progressive opposition, denying President Joe Biden a much-need win as Democrats’ bigger, $1.75 trillion social spending plan also remains in limbo.

“I think it’s wholly apparent that today was not a success,” said Virginia Rep. Abigail Spanberger, whose state has a high-stakes gubernatorial showdown Tuesday that Democrats were hoping to boost with the infrastructure vote.

“Because people choose to be obstructionists, we’re not delivering these things to my state or to the rest of the country,” the swing-district Democrat added. “I guess we’ll just wait because apparently failing roads and bridges can just wait in the minds of some people.”

Democrats slunk out of the House chamber embarrassed — furious at the liberals who dug in and a White House that refused to pressure them to relent — and openly fretting about the long-term repercussions, given the tough climb they face in the midterms. Progressive leaders are predicting the party will work out its differences and pass both bills in the House within days. But it’s a far cry from what top Democrats had hoped to deliver ahead of a critical week for the party.

“If I'm going to be honest, yeah, I’m worried about it,” said Rep. Gregory Meeks (D-N.Y.). “There’s a lot on the line here — a lot on the line. … We fill our cup up by getting stuff done. It’s not over.”

The party started with a clear plan for this week: send a $550 billion infrastructure bill to Biden’s desk that would start his foreign trip with a marketable victory and offer a much-needed boost to Virginia Democratic candidate Terry McAuliffe ahead of a nail-biter gubernatorial election Tuesday.

Instead Democrats are going home with nothing to show but a short-term extension of highway and transit programs and promises to reconvene next week and try again. Senior party members insist they had good reason to believe this week would be different from late September, when another wall of liberal opposition forced Pelosi to punt an infrastructure vote.

This time they had a Biden-blessed deal, a chunk of legislative text and a full-throttle whipping operation.

They still couldn’t overcome the trust gap between the party’s liberals and their moderate colleagues across the Capitol: Sens. Kyrsten Sinema (D-Ariz.) and Joe Manchin (D-W.Va.).

“All they need to do is one simple thing, which is to affirm they are in agreement with the framework. They just need to publicly announce it. Clearly they aren’t willing to do that, which is saying a lot,” said Rep. Ruben Gallego (D-Ariz.), who has not ruled out a primary challenge to Sinema.

The House’s departure Thursday night virtually guaranteed there would be no major vote on Biden’s agenda ahead of McAuliffe’s election on Tuesday. If he loses, many Democrats worry that could spell doom for their already-teetering domestic agenda as the party’s two wings continue to bicker over the contours of their $1.75 trillion spending package.

“Our whole argument as Democrats is premised on the idea that we're going to make things better in real life. As opposed to the other side, which just constantly lies and seems to live in a world of misinformation and fantasy,” said Rep. Conor Lamb (D-Pa.).

“But if we're going to win that argument," he added, "we actually have to do the things we said we're going to do.”

While the rest of the caucus seethed, progressives defended their refusal to support the infrastructure bill amid lingering uncertainty about Sinema and Manchin's commitment to the social spending framework Biden unveiled Thursday morning.

“I told anybody that would listen that we did not have the votes for [an infrastructure] vote tonight,” said Congressional Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.).

Jayapal went on to say that Biden did not explicitly ask for a vote on the infrastructure bill when he visited the Hill Thursday morning — which many on the left took as a tacit green light to continue opposing Democratic leadership’s push for a vote until they were ready. Biden’s lack of a clear demand for a Thursday vote may have had the unintended effect of emboldening liberals, giving them political cover to tank an infrastructure bill that Pelosi and other leaders were whipping.

“The speaker did, but the president did not” ask for Democrats' infrastructure vote, Jayapal said. “The president said he wants us to pass both bills and that this coming week was going to be critical for that. We will deliver both these bills to him, from the House, next week.”

Senior Democrats were privately frustrated at Biden’s lack of direct call to action, and some sought to convince the White House to further clarify his position throughout the day, with no success.

“Had the president led us down that hallway to the House floor this morning ... I think it would have been close,” said Rep. Dean Phillips (D-Minn.). “If the vote was kept open a long time, I think with Republican votes it would have passed.”

### AT: Reconciliation---PC Fails/Not Key---2AC

#### Biden was already all in and failed- PC is exhausted

Michael D. Shear and Jim Tankersley, 10-28-2021, "Biden Implores Democrats to Support His Transformative Agenda," New York Times https://www.nytimes.com/2021/10/28/us/politics/infrastructure-bill-spending-plan.html

Mr. Biden and his aides gambled on Thursday, effectively calling for a final decision on his economic and environmental agenda and daring holdout Democrats not to back it. Senior administration officials said that the decision to go all-in was a product of the president’s belief that he had exhausted all avenues in the talks and secured the best possible package he could — and, crucially, that the package could command support from all corners of a fickle Democratic caucus.

But as he prepared to land in Rome, Mr. Biden’s bet had not yet paid off. He had not ended months of intraparty squabbling that has dragged down his poll ratings, jeopardized Democratic candidates and raised deep doubts among Americans that his presidency can deliver on the promises of a vast social and economic agenda.

In the closed-door session on Thursday, Speaker Nancy Pelosi told Democratic lawmakers that “when the president gets off that plane, we want him to have a vote of confidence from this Congress.” She urged them to vote on Thursday on a separate, bipartisan $1 trillion infrastructure measure that progressives have seen as their best leverage to ensure passage of the rest of Mr. Biden’s agenda.

Instead, for the second time in a month, Ms. Pelosi pulled back from plans on that vote after progressive Democrats objected again. They ignored the president’s entreaties, signaling their continued mistrust of moderate Democratic senators, whom they fear will not back Mr. Biden’s larger social spending bill when it finally comes to a vote.

### AT: Reconciliation---AT: Climate---Glasgow Fails---2AC

#### Glasgow fails- targets too small, no fast changes, factionalism

Economist, 10-23-2021, "Broken promises, energy shortages and covid-19 will hamper COP26," https://www.economist.com/international/2021/10/23/broken-promises-energy-shortages-and-covid-19-will-hamper-cop26?utm\_campaign=the-economist-today&utm\_medium=newsletter&utm\_source=salesforce-marketing-cloud&utm\_term=2021-10-25&utm\_content=article-link-5&etear=nl\_today\_5

A lot of hot air

Australia is an outlier among rich countries. Its original ndc was not particularly ambitious. Nor is its new one. Meanwhile many emerging economies have set lax targets. Russia and Indonesia are promising no new effort. By employing some creative carbon accounting, Mexico and Brazil have produced new strategies that are less ambitious than their original plans.

India, which is responsible for 7% of carbon-dioxide emissions, has not yet published a fresh climate strategy. Nor has China, which accounts for 28%. Last year it said that it planned to make its emissions peak “before” 2030, having previously said only that it would reach this milestone “around” that time. Many would like it to bring this date forward, but Li Shuo of Greenpeace thinks that is unlikely to happen soon. He says there is more chance China might strengthen its pledge by declaring an absolute figure above which its annual emissions will not rise.

Taken together, the new targets underwhelm. Promises made by the middle of this year give a 50% chance of keeping warming below 2.1°C but only a 5% chance of keeping it under 1.5°C, according to the International Energy Agency (iea), a forecaster (see chart). And this assumes that all the pledges are honoured, which is far from guaranteed.

On the tail of these lacklustre announcements is a failure relating to funding for developing countries. In 2009 rich countries vowed that by 2020 they would be providing poor ones with $100bn in climate finance each year. Roughly equal amounts were to go towards adaptation and to reducing emissions. The figure is a fraction of the $2trn annual investment that the iea believes developing countries need. But the promise is supposed to signal the willingness of richer countries to make sacrifices for the good of the planet.

In 2019 only $80bn was provided, according to the oecd, a club of rich countries. This year a last-minute whip-round could perhaps see the total rise above $100bn before the conference. But poor countries are miffed. The original deadline was 2020—when, because of the pandemic, the total was probably lower even than in 2019. And only about 25% of the cash is financing ways of adapting to climate change, instead of the 50% promised.

All these disappointments will cause hand-wringing at the summit. Rich countries may re-emphasise their willingness to lend. They may offer an aggregate figure over several years, such as $500bn between 2020 and 2025. But no country is likely to swiftly adjust its new ndc. Designing them takes months of work and co-ordination across government departments.

Instead, progress in Glasgow will probably have to come from agreements struck in narrower debates, the outcomes of which will help countries implement their existing climate strategies, and make them more likely to increase their ambitions in the future. One job is to agree on rules for international carbon markets, such as what double-counting means when it comes to carbon credits.

A second debate is about “loss and damage”, meaning how far countries that will suffer most from climate change should receive compensation. The topic is taboo among rich countries. In Paris they eventually allowed the concept to be mentioned in the agreement, but resisted language that might actually lead to something being done. Poor countries hope to move it up the agenda and to lay the groundwork for more concrete discussions in the future.

Third comes the effort to get governments to sign up to sector-level pledges, such as to stop burning coal, ban the sale of internal-combustion engines and halt deforestation. The Global Methane Pledge, a promising new pact, calls for cutting global methane emissions by at least 30% from 2020 levels by 2030. Its backers include America and the eu. Measured over 20 years, a tonne of methane causes 86 times more warming than a tonne of carbon dioxide but the gas is naturally removed from the atmosphere much faster than CO2. The Climate and Clean Air Coalition, made up of governments and lobby groups, says cutting human-made methane emissions in half by 2050 could lower temperatures by about 0.2°C.

The fourth topic is what Helen Mountford of the World Resources Institute, a think-tank, calls “keeping 1.5°C alive”. Green groups and some governments want countries to acknowledge that the world is failing to slow global warming, and to state explicitly that they wish to keep the increase under 1.5°C. China and India refused to back a similar statement at the g20 summit in July. They feel that if the temperature targets are revised the same should happen to the climate-finance goals.

A global energy shortage provides an unfortunate backdrop to the discussions. In Asia coal shortages are forcing factories to curb output. European gas and power prices have gone berserk. Governments are watching Joe Biden try to get legislation containing support for clean-energy firms through Congress. The wrangling is a reminder of the difficulties democratic countries face when they seek to enact big climate reforms.

Covid-19 has increased the costs and risks of getting negotiators to the summit. Poor countries, in particular, may send fewer than usual. Even in normal times they are at a disadvantage to rich places, which can send hordes of technocrats. The fact that many rich countries appear to be past the worst of the pandemic, while poor ones are still struggling through it, will only make such inequalities rankle more.

Block parties

All this could deepen the usual factionalism. Delegations attending the cop typically form three blocks. Poor countries ask rich ones for more ambition and more money. Rich countries try to convince emerging ones, which account for the lion’s share of the growth in emissions, to pollute less. And emerging economies try to tell rich countries that they are in fact part of the poor and vulnerable group, while also reminding rich countries that they got where they are today by polluting.

Yet there are some signs that these old alliances are loosening. Emerging economies have less excuse for inaction than they did when Donald Trump was in the White House, says Laurence Tubiana of the European Climate Foundation, a lobby group (Mr Trump pulled America out of the Paris agreement; it rejoined in February). Some, such as South Africa, are becoming more ambitious. In September China said it would no longer finance new coal-fired power stations outside its borders. Natural disasters in rich countries, such as floods in Germany that killed almost 200 people, may bring a new sense of urgency.

Any progress made at cop26 will probably be incremental, not a “big leap” of the sort John Kerry, America’s climate envoy, has promised. That will enrage grassroots activists. And it hardly matches the scale of the challenge. Two years from now a “Global Stocktake” scheduled under the Paris agreement will examine how well governments are implementing their climate plans. If their most recent climate promises are any indication, the stocktake could reveal a rather bare cupboard

# 1AR

## Cap

### AT: K Prior---2AC

#### Capitalism is a tool not morality. The only question is if the plan is effective.

Nathan Hunt interviewing Rebecca Henderson 21. Henderson, University Professors at Harvard, a research fellow at the National Bureau of Economic Research, and a fellow of both the British Academy and the American Academy of Arts and Sciences. “The Essential Podcast, Episode 32: The Moral Argument for Change — Reimagining Capitalism in a World on Fire”. https://www.spglobal.com/en/research-insights/articles/the-essential-podcast-episode-32-the-moral-argument-for-change-reimagining-capitalism-in-a-world-on-fire

Nathan Hunt: This goes to the heart of what I found both fascinating and challenging about your book, which is that so much seems to depend upon the actions of individuals. My concern is with the underlying structures that are inherent in the capitalist system. The core question I have for you is, do you think that capitalism itself is good or bad? Does it possess an inherent morality?

Rebecca Henderson: No, I do not think capitalism is inherently moral. If we think of capitalism broadly as reliance on free markets, open competition, and the individual ownership of assets. And we could argue, but if we think of it as roughly that set of forces, that coalition can create good things or bad things. Indeed, one of the central themes of the book is the idea that if you don't have anything to balance, the free market, a free market unchecked is a very dangerous, very dangerous thing. I mean, I sometimes use the image of tiger. Capitalism, completely unchecked and completely unbalanced, is voracious. If you tell people that there is no penalty for emitting greenhouse gases, you know, go ahead, burn all the coal burn, burn all the oil, oh yeah, thousands of people for hundreds of years will pay the cost of your doing that, but you know, that's not for you to worry about. People will do it. People will burn the oil and coal and caused the climate crisis. So, capitalism is not inherently good, but it's not inherently bad either. It's a tool. It's a tool for allocating resources for pulling people together to solve problems. And when it's aimed in the right direction and constrained by the right kinds of guardrails, it's unbelievably good. I mean, if you look at the lives we lead compared to our grandparents or our grandparents, parents. We've seen unimagined prosperity. I mean, the human race so much richer and better off than it was, you know, just 50 let alone a hundred years ago. The thing about capitalism, I think, is it has to be in balance with the rest of society, with government, with civil society and we have to remember that as a tool, its original purpose was the creation of prosperity and possibly individual freedom that before capitalism, we had feudalism, you know, you work for the local guy and that's your choice and they control most of economic life and in that context, capitalism is an incredible, both liberation of human potential and creation of real opportunity, when the rules are right. We say, hey, you know, I've said often in public, I'm a huge fan of capitalism and it's true. But I'm a huge fan of capitalism with the right construct and the original construct was creating freedom and prosperity. I mean, Charles Taylor was a Catholic scholar who invented the idea that capitalism was born in a cradle of Christianity, that it was assumed it would be constrained by real moral values and society with its own goals and aims. And that as we, as a society has become less overtly religious, those constraints have sort of crumbled away and we need to rebuild the kinds of constraints that will make capitalism a good tool for us.

### Cap Solves---Environment---2AC/1AR

#### Capitalism greatly increases the quality of life and environmental progress---free markets reduce pollution and emissions

Nick Loris 21. Nick Loris is the Deputy Director of the Thomas A. Roe Institute for Economic Policy Studies and Herbert and Joyce Morgan Fellow in Energy and Environmental Policy at The Heritage Foundation. “Free Economies are Clean Economies.” Conservative Coalition for Climate Solutions. 2021. https://c3solutions.org/wp-content/uploads/2021/04/Free-Economies-are-Clean-Economies-4.pdf

When it comes to economic, social and environmental progress, there is much to celebrate:

• More than one billion people have risen out of extreme poverty over the past 30 years.2

• The share of the global population that is undernourished is trending downward.3

• In 2018, the number of people without access to electricity fell below one billion people for the first time ever.4

• Death rates from air pollution, particularly indoor air pollution, declined substantially from 1990-2017.5

• In the U.S., the Environmental Protection Agency’s latest air quality trends report shows that common air pollutants have dropped a combined 77 percent since 1970.6

Despite taking significant strides forward in achieving a better quality of life and a healthier planet, we face a wide range of socioeconomic and environmental challenges. Some environmental challenges are localized, whether it is invasive species in a Great Lake or soil pollution in a Chinese province that stems from a number of industrial activities.7 Other issues are regional in nature. India, for instance, has some of the world’s poorest air quality from coal generation, fuel exhaust, industrial processes, crop burning and its geographic makeup.8 India’s pollution adversely affects the air quality of neighboring countries. And other challenges are global collective action problems, such as ocean plastics and climate change.9 **As discussed in more detail in subsequent sections, the absence of drivers of economic freedom can cause or exacerbate these environmental challenges.**

### AT Inequality

#### Growth solves poverty---the world’s getting better---poverty and literacy rates prove.

Dylan Matthews 19. Senior Correspondent for Vox. "Bill Gates tweeted out a chart and sparked a huge debate about global poverty." Vox. 2-12-2019. https://www.vox.com/future-perfect/2019/2/12/18215534/bill-gates-global-poverty-chart

So the share of humanity in extreme poverty — measured at either a $1.90 a day or $7.40 line — is falling. People below either line are also doing better in terms of poverty; they have more money, are spending more, etc. But there’s more to life than measurable consumption, ending $7.40-a-day poverty will take many many decades, and there’s more we could do to speed up that process.

While not included in the Hickel-Kenny consensus document, I would note that Hickel agrees with Gates, Pinker, Roser, etc. that some material living standards outside of poverty and consumption have improved in recent decades. According to the UN Population Division’s numbers (compiled by Our World in Data, naturally), life expectancy in China rose from only 43 years in 1950 to 76 in 2015 (in a fact convenient to no one but Bob Avakian’s politics, it even grew while Mao was killing tens of millions of people). India’s life expectancy grew from 35 to 68 over the same period; in the Democratic Republic of Congo, it grew from 38 to 59. Likewise, literacy rates and years of schooling have increased.

“Yes, of course I agree that life expectancy has increased and child mortality has decreased,” Hickel wrote in an email to me. “Those data are not controversial, although I differ from Gates and Pinker in my assessment of the causes of those improvements. … As for the graphs on literacy and years of schooling: the data are accurate, but I believe these are very narrow indicators of education, and that a broader, more holistic view reveals a more complicated story.”

In his letter to Pinker, too, Hickel agrees that life expectancy and education have seen gains. “In your work you have invoked gains in life expectancy and education as part of a narrative that seeks to justify neoliberal globalization,” Hickel writes. “But ... that’s intellectually dishonest. What contributes most to improvements in life expectancy is in fact simple public health interventions (sanitation, antibiotics, vaccines), and what matters for education is, well, public education.”

So while there is obviously vociferous disagreement about what political narrative the facts on life expectancy and education supports, everyone appears to agree that the world has made major progress on both.

### AT Complexity

#### Innovation’s sustainable

Economist 13 — Economist, Has the ideas machine broken down?, 2013, [www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing](http://www.economist.com/news/briefing/21569381-idea-innovation-and-new-technology-have-stopped-driving-growth-getting-increasing)

The fountains of paradise

Closer analysis of recent figures, though, suggests reason for optimism. Across the economy as a whole productivity did slow in 2005 and 2006—but productivity growth in manufacturing fared better. The global financial crisis and its aftermath make more recent data hard to interpret. As for the strong productivity growth in the late 1990s, it may have been premature to see it as the effect of information technology making all sorts of sectors more productive. It now looks as though it was driven just by the industries actually making the computers, mobile phones and the like. The effects on the productivity of people and companies buying the new technology seem to have begun appearing in the 2000s, but may not yet have come into their own. Research by Susanto Basu of Boston College and John Fernald of the San Francisco Federal Reserve suggests that the lag between investments in information-and-communication technologies and improvements in productivity is between five and 15 years. The drop in productivity in 2004, on that reckoning, reflected a state of technology definitely pre-Google, and quite possibly pre-web. Full exploitation of a technology can take far longer than that. Innovation and technology, though talked of almost interchangeably, are not the same thing. Innovation is what people newly know how to do. Technology is what they are actually doing; and that is what matters to the economy. Steel boxes and diesel engines have been around since the 1900s, and their use together in containerised shipping goes back to the 1950s. But their great impact as the backbone of global trade did not come for decades after that. Roughly a century lapsed between the first commercial deployments of James Watt’s steam engine and steam’s peak contribution to British growth. Some four decades separated the critical innovations in electrical engineering of the 1880s and the broad influence of electrification on economic growth. Mr Gordon himself notes that the innovations of the late 19th century drove productivity growth until the early 1970s; it is rather uncharitable of him to assume that the post-2004 slump represents the full exhaustion of potential gains from information technology. And information innovation is still in its infancy. Ray Kurzweil, a pioneer of computer science and a devotee of exponential technological extrapolation, likes to talk of “the second half of the chess board”. There is an old fable in which a gullible king is tricked into paying an obligation in grains of rice, one on the first square of a chessboard, two on the second, four on the third, the payment doubling with every square. Along the first row, the obligation is minuscule. With half the chessboard covered, the king is out only about 100 tonnes of rice. But a square before reaching the end of the seventh row he has laid out 500m tonnes in total—the whole world’s annual rice production. He will have to put more or less the same amount again on the next square. And there will still be a row to go. Erik Brynjolfsson and Andrew McAfee of MIT make use of this image in their e-book “Race Against the Machine”. By the measure known as Moore’s law, the ability to get calculations out of a piece of silicon doubles every 18 months. That growth rate will not last for ever; but other aspects of computation, such as the capacity of algorithms to handle data, are also growing exponentially. When such a capacity is low, that doubling does not matter. As soon as it matters at all, though, it can quickly start to matter a lot. On the second half of the chessboard not only has the cumulative effect of innovations become large, but each new iteration of innovation delivers a technological jolt as powerful as all previous rounds combined.

### AT: Peak Phosphorus

#### Peak phosphorus is a myth

ACG 17 — Ag Chemi Group, S.R.O., 8-31-2017, "Why does the myth of ‘global phosphate shortage’ still exist?," <https://www.agchemigroup.eu/es/blog/entrada/why-does-myth-global-phosphate-shortage-still-exist>, [accessed: 8/30/18] — JPark

A quick internet search of the word ‘phosphate’ and it will not take you long to find suggestions that the planet will soon run out of phosphate. But why is this myth still so popular, and where did it begin?

Why is the ‘global phosphate shortage’ myth so popular?

The popularity of the ‘phosphate shortage myth’ is an internet phenomenon that needs to be left in the same bucket of ideas and conspiracy theories as ‘fake moon landings’ and ‘9/11 government planned attacks’. Given the importance that phosphate plays in feeding the world, it is a great scare story that is certain to get more clicks than a story reporting that we have only 400 years of rock phosphate remaining. Much of the myth may be based on historic concerns created when other forms of fertilizer raw material began to deplete. When guano deposits began to empty at the end of the 19th century there was concern among fertilizer manufacturers and phosphorus traders on where the next supply would come from. Perhaps today’s ‘peak phosphate’ myth is simply history repeating itself.

[image omitted]

19th century workers at a Guano Mine

Another reason for the story’s popularity is the recent phosphorus price uncertainty and the 2008 price spike, as a 2011 Yale University report by Fred Pearce, 'Phosphate: A Critical Resource Misused and Now Running Low' acknowledges, “Already, like other key commodities with once-dominant sources running low, the price of phosphate is starting to yo-yo alarmingly. Prices spiked at an 800-percent increase in 2008.” The price of commodity rock phosphate soared in 2008 and has remained unstable since Whilst the reasons for the sudden increase in the value of rock phosphate is complex (although largely involve Chinese export taxes and commodity trading forces), the natural economics of supply and demand could easily be blamed for such a price change. A logic that states; the price is jumping? We must be running out. The myth is also evidently connected to the more factual 1974 theory by M.King Hubert who devised the term ‘peak oil’ based on “a point in time when the maximum rate of extraction of petroleum is reached, after which it is expected to enter terminal decline.” Good ideas with simple, catchy phrases can easily be attached to bad ideas.

Where did the ‘global phosphate shortage’ myth begin?

Dating back to the start of this century, there have been reports of mankind using up the planet’s limited amount of phosphorus. As the online food production journal, TheSalt, noted, “In the last decade or so, inspired by the conversation about peak oil, a few environmental researchers began talking about the possibility of peak phosphorus and the dangers that a decline in such a critical resource would pose to food production. But even those researchers acknowledged that the estimates of global phosphate reserves — and how long they'll last — were fuzzy.” One of the key researchers warning of caution over phosphate supply was Dr Dana Cordell. Together with Jan-Olof Drangert and Stuart White, her 2009 report, ‘The story of phosphorus: Global food security and food for thought’ stated that, “modern agriculture is dependent on phosphorus derived from phosphate rock, which is a non-renewable resource and current global reserves may be depleted in 50–100 years. While phosphorus demand is projected to increase, the expected global peak in phosphorus production is predicted to occur around 2030.” And while the claim of a ‘peak phosphorus’ event in 2030 was highly contentious, Dr Cordell continues to preach caution. In a more recent 2011 analysis of phosphate supply, ‘Peak Phosphorus: Clarifying the Key Issues of a Vigorous Debate about Long-Term Phosphorus Security’, while accepting that the global supply of phosphate will not happen tomorrow, Dr Cordell states that, “The sudden emergence of the peak phosphorus and global phosphorus scarcity debate on the international arena has perhaps raised more questions than it has resolved.” But Dr Cordell is not alone in preaching caution when it comes to extracting rock phosphate, as other environmental scientists hold similar concerns. For example, Geneviève Metson, a doctoral student in natural resource science at McGill University in Canada, stated in in a paper published in the journal Environmental Research Letters that, “The finite supply of P is a key concern because there are no substitutes for P and we cannot produce more than exists on Earth.” She then adds that, “We need to manage our food system in an equitable and sustainable way, and we need to look at many resources and priorities simultaneously.” Today, Dr Cordell works at the Sydney based Institute for Sustainable Futures, where she has toned down her fears of ‘peak production’ but continues to recommend a cautious, environmentally friendly approach to phosphate extraction and use. Stating that, “While there is substantial uncertainty and lack of consensus regarding the size and longevity of remaining phosphate rock reserves, there is sufficient consensus between the scientific community, industry and others that the current situation is unsustainable with respect to the environmental impacts…inequitable access and geopolitics…the finite nature of phosphate rock and the inefficiency of phosphorus use throughout the current food production and consumption system.”

The ‘Peak Phosphorus’ Myth Debunked

Numerous other studies have since debunked theories of a ‘soon-to-happen phosphorus shortage’, so that today it is generally accepted that we have as much as 300 years of phosphate supply remaining at current rates of usage. While population growth and soil deterioration may account for an increased in demand for phosphate, there are thought to be numerous, as yet unknown or untapped deposits of phosphorus (for example, at the bottom of the sea). As Juan von Gernet, a senior consultant on fertilizers for CRU, a commodities research and consulting firm in London, states, "Peak phosphorus is a total myth, and I don't think it's anything to worry about in our lifetime. There is a huge amount of phosphate in the land, and if we run out of that, there are a lot of unexplored areas on the seabed which can be extracted if required." Similarly, Steven Van Kauwenbergh, principal scientist and leader of the Phosphate Research and Resources Initiative at IFDC, an international food security and agriculture organization, recently made it clear that, “Phosphorus is pretty far down the list of things we're going to suddenly run out of.” Yes, phosphate is finite. Yes, we should use it wisely. No, we will not run out of phosphate anytime soon!

### AT Inev/Transit

#### Turn---elites block transition---causes mass death---only capitalism enables a peaceful solution to poverty.

Rainer Zitelmann 21. German historian and author of “The Rich in Public Opinion.” "Violence Is History’s Great Economic Leveler." National Interest. 6-30-2021. https://nationalinterest.org/feature/violence-history%E2%80%99s-great-economic-leveler-188974

Another question that is all too rarely asked is: What would be the price of eliminating inequality? In 2017, the renowned Stanford historian and scholar of ancient history Walter Scheidel presented an impressive historical analysis of this question: The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century. He concludes that societies that have been spared mass violence and catastrophes have never experienced substantial reductions in inequality.

Substantial reductions in inequality have only ever been achieved as the result of violent shocks, primarily consisting of war, revolution, state failure and systems collapse, and plague.

According to Scheidel, the greatest levelers of the twentieth century did not include peaceful social reforms, they were the two world wars and the communist revolutions. More than 100 million people died in each of the two world wars and in the communist social experiments.

Total War as a Great Leveler

World War II serves as Scheidel’s strongest example of “total war” leveling. Take Japan: In 1938, the wealthiest 1 percent of the population received 19.9 percent of all reported income before taxes and transfers. Within the next seven years, their share dropped by two-thirds, all the way down to 6.4 percent. More than half of this loss was incurred by the richest tenth of that top bracket: their income share collapsed from 9.2 percent to 1.9 percent in the same period, a decline by almost four-fifths. The declared real value of the income of the largest 1 percent of estates in Japan’s population fell by 90 percent between 1936 and 1945 and by almost 97 percent between 1936 to 1949. The top 0.1 percent of all estates lost even more during this period, 93 and 98 percent, respectively. During this period, the Japanese economic system was transformed as state intervention gradually created a planned economy that preserved only a facade of free-market capitalism. Executive bonuses were capped, rental income was fixed by the authorities, and between 1935 and 1943 the top income tax rate in Japan doubled.

Significant leveling also took place in other countries during wartime. According to Scheidel’s analysis, the two world wars were among the greatest levelers in history. The average percentage drop of top income shares in countries that actively fought in World War II as frontline states was 31 percent of the prewar level. This is a robust finding because the sample consists of a dozen countries. The only two countries in which inequality increased during this period were also those farthest from the major theaters of war (Argentina and South Africa).

Low savings rates and depressed asset prices, physical destruction and the loss of foreign assets, inflation and progressive taxation, rent and price controls, and nationalization all contributed in varying degrees to equalization. The wealth of the rich was dramatically reduced in the two world wars, whether countries lost or won, suffered occupation during or after the war, were democracies or run by autocratic regimes.

The economic consequences of the two world wars were, therefore, devastating for the rich—a fact that stands in direct opposition to the thesis that it was capitalists that instigated the wars in pursuit of their own economic interests. Contrary to the popular perception that the lower classes suffered most in the wars, in economic terms it was the capitalists who were the biggest losers.

Incidentally, the left-wing economist Thomas Piketty comes to a similar conclusion. In his book Capital in the Twenty-First Century, he argues that progressive taxation in the twentieth century was primarily a product of the two world wars and not of democracy.

Poverty is Eliminated Peacefully

The price of reducing inequality has thus usually involved violent shocks and catastrophes, whose victims have been not only the rich but millions and millions of people. Neither nonviolent land reforms nor economic crises nor democratization has had as great a leveling effect throughout recorded history as these violent upheavals. If the goal is to distribute income and wealth more equally, says historian Scheidel, then we simply cannot close our eyes to the violent ruptures that have so often proved necessary to achieve that goal. We must ask ourselves whether humanity has ever succeeded in equalizing the distribution of wealth without considerable violence. Analyzing thousands of years of human history, Scheidel’s answer is no. This may be a depressing finding for many adherents of egalitarian ideas.

However, if we shift perspective, and ask not “How do we reduce inequality?” but “How do we reduce poverty?” then we can provide an optimistic answer: Not violent ruptures of the kind that led to reductions of inequality, but very peaceful mechanisms, namely innovations and growth, brought about by the forces of capitalism, have led to the greatest declines in poverty. Or, to put it another way: The greatest “levelers” in history have been violent events such as wars, revolutions, state and systems collapses, and pandemics, but the greatest poverty reducer in history has been capitalism. Before capitalism came into being, most of the world’s population was living in extreme poverty—in 1820, the rate stood at 90 percent. Today, it’s down to less than 10 percent. And the most remarkable aspect of all this progress is that, in the recent decades since the end of communism in China and other countries, the decline in poverty has accelerated to a pace unmatched in any previous period of human history. In 1981, the rate was still 42.7 percent; by 2000, it had fallen to 27.8 percent, and in 2021 it was only 9.3 percent.