# Emory NP Round 8 Open Source

# 1AC

## 1AC

### Plan---1AC

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

### Inequality---1AC

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

Lauren Sillman 20. Antitrust Associate, Clifford Chance LLP; J.D., Georgetown University Law Center; B.A., University of Iowa. “ANTITRUST FOR CONSUMERS AND WORKERS: A FRAMEWORK FOR LABOR MARKET ANALYSIS IN MERGER REVIEW.” https://lawjournal.ku.edu/wp-content/uploads/2020/12/4\_Sillman\_Antitrust\_V30\_I1.pdf

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.

Joseph E. Stiglitz 21. Joseph E. Stiglitz is an economist and professor at Columbia University. He is the co-chair of the High-Level Expert Group on the Measurement of Economic Performance and Social Progress at the OECD, and the Chief Economist of the Roosevelt Institute. He has served as chief economist of the World Bank and chairman of the Council of Economic Advisers. He was awarded the Nobel Prize in economics in 2001“Fostering More-Competitive Labor Markets” Inequality and the Labor Market: The Case for Greater Competition. Brookings Institution Press. (2021) https://www.jstor.org/stable/10.7864/j.ctv13vdhvm.6

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.

#### Employers are using anticompetitive tactics against workers---destroys wages.

Eduardo Porter 3/7/22. Economics reporter for The New York Times. "Employer Practices Limit Workers’ Choices and Wages, U.S. Study Argues". No Publication. 3-7-2022. https://www.nytimes.com/2022/03/07/business/economy/treasury-competition-report.html

The recent narrative is that there is a tight labor market that gives workers leverage. But a new report from the Biden administration argues that the deck is still stacked against workers, reducing their ability to move from one employer to another and hurting their pay.

The report, released Monday by the Treasury Department, contends that employers often face little competition for their workers, allowing them to pay substantially less than they would otherwise.

“There is a recognition that the idea of a competitive labor market is a fiction,” said Ben Harris, assistant Treasury secretary in the office of economic policy, which prepared the report. “This is a sea change in economics.”

The report follows up on a promise made by President Biden last summer when he issued an executive order directing his administration to address excessive concentration in the market for work.

Drawing from recent economic research, the report concludes that lack of competition in the job market costs workers, on average, 15 to 25 percent of what they might otherwise make. And it emphasizes that the administration will deploy the tools at its disposal to restore competition in the market for work.

“This is the administration declaring where it is on the enforcement of antitrust in labor markets,” Tim Wu, a special assistant to the president for technology and competition policy on the National Economic Council, said in an interview in which he laid out the report’s findings. “It is sending a strong signal about the direction in which antitrust enforcement and policy is going.”

Across the economy, wage gains generally come about when a worker changes jobs or has a credible offer from outside that will encourage the current employer to provide an increase, argues Betsey Stevenson, a professor of economics at the University of Michigan who was on President Barack Obama’s Council of Economic Advisers.

“Companies are well aware of this,” she said in an interview, so they rally around a simple solution: “If we just stop competing, it will be better for everybody.”

The Treasury report lays out the many ways in which employers do this. There are noncompete agreements that bar workers from moving to a competitor, and nondisclosure agreements that keep them from sharing information about wages and working conditions — critical information for workers to understand their options. Some companies make no-poaching deals.

“There is a long list of insidious efforts to take power out of the hands of workers and seize it for employers’ gain,” said Seth Harris, deputy director at the National Economic Council and deputy assistant to the president for labor and the economy.

#### Antitrust enforcement 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.

Frederick Solt 11. Ph.D. in Political Science from University of North Carolina at Chapel Hill, currently Associate Professor of Political Science at the University of Iowa, Assistant Professor, Departments of Political Science and Sociology, Southern Illinois at the time of publication. “Diversionary Nationalism: Economic Inequality and the Formation of National Pride.” The Journal of Politics, Vol. 73, No. 3, pgs. 821-830, July 2011.

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.

Sharon Block & Benjamin Elga 21. Sharon Block is the former executive director of the Labor and Worklife Program at Harvard Law School, where she also teaches. She currently serves as the Associate Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Benjamin Elga is the founding executive director of Justice Catalyst and Justice Catalyst Law. “The Legal Case for Reform”. Inequality and the Labor Market: The Case for Greater Competition. Brookings Institution Press. (2021) https://www.jstor.org/stable/10.7864/j.ctv13vdhvm.7

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.

#### Eroding financial resilience causes war---that overcomes traditional barriers to conflict.

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

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

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

Crisis responses limited

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

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

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

From bust to bubble

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

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

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

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

Liberalization’s discontents

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

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

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

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

Insecurity, populism, conflict

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

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

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

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

Avoiding Thucydides’ iceberg

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

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

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

#### 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.

### 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.

#### 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.

### 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.

Michael Spiro 20. JD from the University of Washington School of Law, an L.L.M. in Innovation and Technology Law from Seattle University School of Law. Corporate counsel at Smartsheet Inc. “The FTC and AI Governance: A Regulatory Proposal.” Seattle Journal of Seattle Journal of Technology Environmental & Innovation Law. Volume 10 Issue 1 Article 2. 12-19-2020. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1001&context=sjteil

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.

Anders Sandberg et al. 08. Anders Sandberg is a James Martin Research Fellow at the Future of Humanity Institute at Oxford University. Jason G. Matheny is a PhD candidate in Health Policy and Management at Johns Hopkins Bloomberg School of Public Health. Milan M. Ćirković is senior research associate at the Astronomical Observatory of Belgrade. "How can we reduce the risk of human extinction?". Bulletin of the Atomic Scientists. 9-9-2008. https://thebulletin.org/2008/09/how-can-we-reduce-the-risk-of-human-extinction/

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:

### Extra---Inequality---2AC

#### Monopsony effect is ubiquitous and statistically significant.

Eric Posner 11/29/21. Kirkland & Ellis Distinguished Service Professor of Law, Arthur and Esther Kane Research Chair at the University of Chicago. "The Rise of the Labor-Antitrust Movement Competition Policy International". Competition Policy International. https://www.competitionpolicyinternational.com/the-rise-of-the-labor-antitrust-movement/

British economist Alan Manning, who wrote an influential book on labor monopsony in 2003,11 is one such exception. Manning’s insights had to await empirical validation, and the necessary data would not become available for many years. Finally, in 2017, a paper arrived that reported results of a survey of labor markets across the United States, based on a new dataset (the paper was published in 2020).12 The authors found that more than 60 percent of labor markets exceeded levels of concentration that set off alarm bells under American merger law.13 Later that year, another paper found similar numbers using a different dataset.14 The significance of these papers lay in their demonstration that concentration in labor markets was not anomalous but ubiquitous, not a theoretical curiosity but a major problem for public policy. Since then, numerous papers have confirmed that U.S. labor markets are extremely concentrated. A meta-analysis by Sokolova & Sorenson, published in 2021, identified 53 studies on monopsony of labor markets, and found a statistically significant negative correlation between concentration and wages.15

It is possible that a negative correlation between concentration and wages could arise if larger firms employ workers more productively than smaller firms do. If so, concentration would not be an antitrust problem. A number of papers have tackled this ambiguity. In a study of hospital mergers, for example, Prager & Schmitt found that when hospital mergers substantially increased labor market concentration, wage growth declined for employees whose skills were tied to the medical profession (e.g. nurses) but not for those with options to work at other kinds of employers (e.g. cafeteria workers), as one would predict.16 Because these patterns occurred after mergers concentrated health-related labor markets, they went some distance to showing that causation moves from concentration to wages. But even if productivity differences account for some of the empirical results in the studies, the issue can be directly addressed in antitrust litigation.

#### Concentration reduces wages---antitrust solves.

Zachary Brown 21. Program Associate. “The Harms of Monopolies on American Workers” Public Citizen. 11-2-21. <https://www.citizen.org/news/the-harms-of-monopolies-on-american-worker/>

Antitrust law and its enforcement **need a major overhaul.** Mergers of large corporations across the country disastrously impacts our economy. And while the broad economic effect of monopolistic rule often hogs all of the attention, we can’t forget the **strong impact** these corporate behemoths have on **American workers.**

In a hearing last month, the House Judiciary Committee took up this very problem. Multiple antitrust experts were called to testify. They illustrated that **effective antitrust protections benefit workers.** Just in case you missed it, here are a few quick hits from the hearing to keep you in the loop.

**More Competition, More Worker Empowerment**

Throughout the hearing, it was repeatedly shown that the lack of competition in the economic landscape **damages conditions for workers**. As markets become more concentrated, **income and wages decrease**, Brian Callaci, chief economist of the Open Markets Institute, testified. Additionally, labor market concentration also has a positive correlation with the amount of **labor rights violations**. Callaci went on to explain that monopsony power, in which there is one dominant buyer (employer) with many sellers (employees), leads to an unfair power balance that leaves workers at a distinct disadvantage. Put simply, if there’s an overwhelmingly powerful boss in town, they can set the salary to whatever they want without fear of competition.

During the hearing, we also heard about the effects of consolidation on workers from Daniel Gross, a delivery driver for United Parcel Service. Citing Amazon’s growth over the years, Gross explained that Amazon’s last mile delivery network especially harms workers because Amazon occupies an increasing percentage of the delivery market yet pays its workers less than UPS. Amazon’s unique power to link its online retail business to its delivery and logistics business puts other delivery services such as USPS, UPS, FedEx, and DHL at a clear disadvantage. This allows Amazons to unduly influence the market for labor conditions.

A Gap in Antitrust Law

Speaking to the distinct impact that the enforcement of antitrust laws could have on the labor markets, Eric Posner, a professor from the University of Chicago Law School, detailed a **“litigation gap” in antitrust** law. While antitrust cases usually revolve around the harms done to other companies, very few decisions consider the effects that mergers and monopolies **have on workers**. Concerns about mergers leading to higher prices are usually central to the debate, while concerns about mergers’ effect on wages are often treated as an afterthought. But recent research shows that **anticompetitive behaviors are just as prevalent in the labor market space** as the product market space.

Posner explained that the Justice Department and the Federal Trade Commission have never challenged a merger because of its anticompetitive effects on labor markets, specifically. Workers deserve fair resources, wages, and conditions – encouraging and protecting competition between companies provides the everyday worker better options.

We can find some encouragement that both President Biden and Jonathan Kanter, Biden’s recent nominee to lead the Justice Department’s Antitrust Division, have expressed an understanding of market concentration’s impact on workers. But it is up to all of us to keep the pressure on our elected officials and government.

Revamping antitrust enforcement to address effects on labor would **more equitably protect** **workers** across the country.

#### Reduced spending is the strongest internal link to the economy

Joseph E. Stiglitz 21. Nobel laureate in economics and University Professor at Columbia University, former chief economist of the World Bank, chair of the US President’s Council of Economic Advisers, co-chair of the High-Level Commission on Carbon Prices. “The Inflation Red Herring.” 6/7/21. https://www.project-syndicate.org/commentary/us-inflation-red-herring-by-joseph-e-stiglitz-2021-06

Conservatives blame the situation on excessively generous unemployment insurance benefits. But econometric studies comparing labor supply across US states suggest that these kinds of labor-disincentive effects are limited. And in any case, the expanded unemployment benefits are set to end in the fall, even though the global economic effects of the virus will linger.

Rather than panicking about inflation, we should be worrying about what will happen to aggregate demand when the funds provided by fiscal relief packages dry up. Many of those at the bottom of the income and wealth distribution have accumulated large debts – including, in some cases, more than a year’s worth of rent arrears, owing to temporary protections against eviction.

Reduced spending by indebted households is unlikely to be offset by those at the top, most of whom have accumulated savings during the pandemic. Given that spending on consumer durables remained robust during the past 16 months, it seems likely that the well-off will treat their additional savings as they would any other windfall: as something to be invested or spent slowly over the course of many years. Unless there is new public spending, the economy could once again suffer from insufficient aggregate demand.

Moreover, even if inflationary pressures were to become truly worrisome, we have tools to dampen demand (and using them would actually strengthen the economy’s long-term prospects). For starters, there is the US Federal Reserve’s interest-rate policy. The past decade-plus of near-zero interest rates has not been economically healthy. The scarcity value of capital is not zero. Low interest rates distort capital markets by triggering a search for yield that leads to excessively low risk premia. Returning to more normal interest rates would be a good thing (though the rich, who have been the primary beneficiaries of this era of super-low interest rates, may beg to differ).

# 2AC

## Inequality

### Monopsony Power---2AC

#### Monopsony effect is ubiquitous and statistically significant.

Eric Posner 11/29/21. Kirkland & Ellis Distinguished Service Professor of Law, Arthur and Esther Kane Research Chair at the University of Chicago. "The Rise of the Labor-Antitrust Movement Competition Policy International". Competition Policy International. https://www.competitionpolicyinternational.com/the-rise-of-the-labor-antitrust-movement/

British economist Alan Manning, who wrote an influential book on labor monopsony in 2003,11 is one such exception. Manning’s insights had to await empirical validation, and the necessary data would not become available for many years. Finally, in 2017, a paper arrived that reported results of a survey of labor markets across the United States, based on a new dataset (the paper was published in 2020).12 The authors found that more than 60 percent of labor markets exceeded levels of concentration that set off alarm bells under American merger law.13 Later that year, another paper found similar numbers using a different dataset.14 The significance of these papers lay in their demonstration that concentration in labor markets was not anomalous but ubiquitous, not a theoretical curiosity but a major problem for public policy. Since then, numerous papers have confirmed that U.S. labor markets are extremely concentrated. A meta-analysis by Sokolova & Sorenson, published in 2021, identified 53 studies on monopsony of labor markets, and found a statistically significant negative correlation between concentration and wages.15

It is possible that a negative correlation between concentration and wages could arise if larger firms employ workers more productively than smaller firms do. If so, concentration would not be an antitrust problem. A number of papers have tackled this ambiguity. In a study of hospital mergers, for example, Prager & Schmitt found that when hospital mergers substantially increased labor market concentration, wage growth declined for employees whose skills were tied to the medical profession (e.g. nurses) but not for those with options to work at other kinds of employers (e.g. cafeteria workers), as one would predict.16 Because these patterns occurred after mergers concentrated health-related labor markets, they went some distance to showing that causation moves from concentration to wages. But even if productivity differences account for some of the empirical results in the studies, the issue can be directly addressed in antitrust litigation.

## DPA CP

### PDCP/Can’t Solve---2AC

#### DPA requires illegality to even be a process

Michael Santos 21. American prison consultant, author of several books about prison, a professor of criminal justice, and an advocate for criminal justice reform. "Non-prosecution & Deferred Prosecution Agreements." Prison Professors. 9-9-2021. https://prisonprofessors.com/non-prosecution-deferred-prosecution-agreements/

Deferred prosecution and non-prosecution agreements enable federal authorities to reach settlements with companies and individuals accused of breaking federal law. The defendants in these cases are essentially on a form of probation. There are many compelling reasons for defendants to enter into a DPA or NPA. For one, many companies cannot survive a full-blown prosecution, in which case these sorts of agreements can be a lifeline. From the government’s view, DPAs and NPAs help deter future criminal conduct, conserve judicial resources, and provide a vehicle for restitution.

### **DPAs Bad---Deterrence---2AC**

#### DPAs bad---collapse deterrence

David M. Uhlmann 13. Jeffrey F. Liss Professor from Practice and Director of the Environmental Law and Policy Program, University of Michigan Law School. "Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability," Maryland Law Review 72:4 (2013), pp. 1335-1336.

I therefore assert that corporate wrongdoing deserves criminal punishment. We can debate whether too much conduct is criminalized in America and whether the criminal law has been used too often to address social and economic problems.234 But within the spheres that we impose criminal liability, corporations can engage in misconduct that deserves criminal punishment, even if that punishment cannot include incarceration.235 Incarceration is not the only form of punishment we impose, even on individuals, and yet we always think of a criminal punishment as different in kind from a non-criminal sanction. That distinction holds true for corporations as well.

Likewise, while some argue there is no utilitarian justification for imposing corporate criminal liability, the deterrent value of a criminal penalty may carry more weight than a civil penalty.236 As I suggest above, criminal penalties are different in kind than civil penalties.237 They cannot be dismissed as a mere cost of doing business because they impose reputational damage in addition to financial consequences.238 While some scholars dispute whether the possibility of reputational damage is a deterrent,239 my experience in corporate plea negotiations for many years at the Justice Department suggests that companies care about the reputational harm of a criminal conviction. Criminal penalties also carry collateral consequences, such as the loss of government contracting,240 that make criminal sanctions a better deterrent than otherwise comparable civil penalties.

Perhaps most significantly of all, criminal prosecution has an expressive function that cannot be achieved by non-criminal disposition.241 Criminal prosecution has a stigmatizing effect that civil enforcement does not.242 "Criminal law is ultimately different from tort and other civil law, not because it demands more culpability but because of the condemnation it imposes on the transgressors."243 When we criminalize conduct, we make clear that it is outside the bounds of acceptable conduct in our society.244 While some civil penalties can have the same effect, there is a qualitative difference in labeling conduct criminal. 245

If the prosecution of corporate crime serves retributive, utilitarian, and expressive purposes, it follows that the failure to prosecute criminally by entering deferred prosecution and non-prosecution agreements will diminish those effects. We achieve less in terms of punishment and deterrence when we enter deferred prosecution and non-prosecution agreements. We fail to express societal condemnation when we agree that charges will be dismissed or not brought at all. Deferred prosecution and non-prosecution minimize criminal conduct and may risk condoning it. As Professor Kahan has explained, "when society deliberately foregoes answering the wrongdoer through punishment, it risks being perceived as endorsing his valuations [and thus his misconduct]."246

Nor is it sufficient to say that we will rely on the criminal prosecution of individuals to punish and deter wrongdoing. In far too many cases of corporate wrongdoing, it is not possible to identify senior level management who are criminally liable. In some cases, the individuals involved are at such low levels and have received such poor training that prosecution of individuals is not appropriate. Even in cases where there are individual defendants, we send a mixed message societally when we say that the individuals have acted criminally but the corporation that benefited from their misconduct did not. Yet that is exactly the message we send with deferred prosecution agreements and even more so with non-prosecution agreements.

### **Stakeholderism Fails---2AC**

#### Stakeholder focus fails---can’t identify stakeholders and can’t resolve tradeoffs.

Lucian A. Bebchuk and Roberto Tallarita 20. James Barr Ames Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance, Harvard Law School; Terence M. Considine Senior Fellow in Law and Economics, and Associate Director of the Program on Corporate Governance, Harvard Law School. “The Illusory Promise of Stakeholder Governance.” Cornell Law Review 106:1, pp. 116-121.

The first difficulty in the implementation of pluralistic stakeholderism is the determination of the stakeholder groups whose interests should be taken into account. Without first making such a determination, directors cannot proceed to aggregate and balance the relevant interests.

To highlight the difficulty involved in this task, Table 1 lists all groups of stakeholders specified by the thirty-two constituency statutes in force in the United States as of December 2019.

---TABLE OMITTED---

All statutes list employees and customers as stakeholders, and most include suppliers as well. As for other groups, however, the statutes vary significantly. Many states mention creditors and local communities, but many do not. Some states allow directors to consider the effect of their decisions on society in general or on the economy of the state or the nation, but most do not. And some provisions are especially idiosyncratic; the New York statute, for example, allows directors to consider "the corporation's retired employees and other beneficiaries receiving or entitled to receive" benefits sponsored by the corporation.

Most notably, almost half of the states include an explicit catchall phrase that permits directors to consider any other (unidentified) groups or factors not listed in the statute. 75 The existence of this phrase indicates that the lawmakers were uncertain regarding the appropriate delineation of the set of stakeholder groups.

As commonly understood, the term "stakeholders" refers to individuals who are affected by corporate decisions. 76 But what counts as being affected by corporate decisions? Clearly, for many public companies, the set of individuals who are directly and indirectly affected by the activities of the corporation is very large indeed. Furthermore, as the examples below indicate, any attempt to delineate the set of relevant stakeholders will confront difficult and challenging questions that have no clear answer.

Consider, for example, a plan to relocate a plant to another region. In addition to the negative effects of the plant relocation on the plant's current employees and the community in which the plant is currently located, should the company's leaders also take into account the positive effects on the employees of the new plant and on the community in which the new plant would operate? Would the answer to this question change if the new location were overseas?

To consider another example, suppose that a company is contemplating a plan that would expand its market share and the number of its employees and would result in a decline in a competitor's revenues and number of employees. Should corporate leaders pay attention to the plan's negative effects on the competitor's employees, suppliers, or shareholders? For yet another example, consider the environmental impact of a company's operations. Should the company's leaders take into account the effects on the residents of faraway countries or only on those living in the United States?

Finally, consider the dimension of time. It is common to include a company's current employees, suppliers, and customers among relevant stakeholders. But should former (or at least recent) employees, suppliers, and customers count as well? And what about potential future employees, suppliers, and customers?

Such questions must be resolved for any implementation of pluralistic stakeholderism. However, they are clearly difficult to answer, and any answers to them would likely be highly contestable. Stakeholderists have largely avoided offering answers to these questions, or even a methodology for reaching such answers. Instead, supporters of pluralistic stakeholderism have largely dealt with these questions by assigning them to corporate leaders to resolve at their discretion. Similarly, state constituency statutes have chosen to delegate to directors broad discretion to identify the relevant stakeholders.77 Thus, on this matter, as in others to be presently discussed, stakeholderism critically relies on the discretion of corporate leaders and thus reinforces the importance of assessing (as we do in Part IV) how corporate leaders should be expected to use their discretion.

b. The Ubiquity of Trade-Offs

Once the relevant stakeholders are identified, stakeholderism requires that their interests be weighed and balanced. Such an exercise raises very difficult questions regarding conflicts between groups of stakeholders and between stakeholders and shareholders, which stakeholderists have largely avoided by leaving their solution, again, to the discretion of corporate leaders. We conjecture that the limited attention devoted to this problem is due to an inaccurate perception that conflicts and trade-offs between shareholders and stakeholders are infrequent. The BRT statement, for example, explicitly denies the possibility that the interests of shareholders and stakeholders can clash in the long run. 78

This view, however, is unsupported. In fact, potential trade-offs between shareholders and stakeholders are ubiquitous. Even after adopting all the stakeholder-friendly policies that are expected to improve long-term shareholder value (that is, after carrying out instrumental stakeholderism to its fullest extent), companies will commonly face many opportunities to provide some stakeholders with benefits that will come at the expense of shareholders.

Consider a company that provides its employees with compensation and benefits at levels that fully enable it to attract and retain talented and productive employees. And suppose that this company has, as many major public companies do, a significant stream of profits that enables it to fund all necessary investments and to also pay dividends. In this common situation, if the directors were to follow pluralistic stakeholderism, they would face a trade-off. Financing an increase in employee compensation by reducing dividends would make employees somewhat better off and shareholders somewhat worse off. Trade-offs and conflicts of this kind are likely to be very common.

In forming the view that trade-offs are rare and that winwin choices are generally available, stakeholderists might have been influenced by empirical work documenting an association between employee satisfaction and shareholder return,79 as well as between social responsibility scores and company valuation.80 However, such associations can simply be explained by the fact that some firms find it value maximizing to take certain stakeholder-friendly actions. This in no way implies, however, that all or even most potential stakeholder-friendly options would be good for shareholders. The empirical evidence is thus fully consistent with the ubiquitous presence of trade-offs.

c. How to Resolve Trade-Offs?

How should corporate leaders resolve the ubiquitous tradeoffs they would face under a pluralistic rule? This is another challenging question that must be addressed by whoever wishes to implement pluralistic stakeholderism.

Consider the following questions. How are directors supposed to assess the effects of their decisions on their various stakeholders? Should all stakeholder effects be converted into a monetary equivalent to enable comparison? If so, how should directors monetarize nonfinancial effects such as employees' psychological well-being, the effects of increased employment on local crime rates, or the expected effects of the company's emissions on global warming? 8 1 Furthermore, how should directors do the balancing? Should they seek to maximize the aggregate welfare of the different groups regardless of where the gains and losses from decisions fall? Or should they try to ensure that value is distributed among various constituencies in a certain way?

Rather than devoting much attention to developing a methodology for aggregating and balancing the interests of diverse constituencies, stakeholderists commonly deal with this issue by leaving the resolution of trade-offs to the judgment and discretion of corporate leaders. For example, Blair and Stout expressly oppose the adoption of a rule or a criterion for resolving trade-offs, arguing that directors should be accorded broad discretion on this matter. 82 It is left unsaid, however, how directors should use their discretion to make these decisions and how outsiders should evaluate how well directors perform their role.

## States CP

### 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.

### LTNB---Politics---2AC

#### Links to politics---debates over preemption link.

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

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

## EU CP

### Race to the bottom Deficit---2ac

#### EU will inevitably follow onto US antitrust laws – business pressure causes a race to the bottom – only changing US law solves.

Eleanor M. Fox 2k. Walter J. Derenberg Professor of Trade Regulation at New York University School of Law. “ANTITRUST AND REGULATORY FEDERALISM: RACES UP, DOWN, AND SIDEWAYS”. New York University Law Review Volume 75, Number 6. December 2000. https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-75-6-Fox.pdf

It is worth exploring, nonetheless, whether there is a scope for a race among nations that might tend to degrade national competition laws. The framing of the problem depends upon what is "good" antitrust law. Currently in the United States, "good" antitrust law is thought by a significant body of experts to proscribe only conduct or transactions that lessen both rivalry and efficiency. If these effects are absent (according to many authorities and cases), the law has no basis for intervention.3 4 To the extent that a nation's antitrust law is based on such an efficiency principle,35 there is small purview for a convincing race-to-the-bottom argument in antitrust (apart from exemptions and state actions that are treated below). Antitrust law thus defined and confined would tend to attract, not repel, business. Stated differently, when the best law-best as seen by firms and investors-is law that reduces costs and does not impose costs, competition among nations to attract businesses and investment will not degrade the law.3 6 This point may be illuminated by contrasting antitrust with environmental law, which is often cited as the paradigm for the race-to-the-bottom phenomenon.37 Environmental regulation normally imposes costs on businesses, even efficient businesses, and usually does so at the point of production. Firms may shift their production sites in response to local costs.3 8 Firms that must pay high costs of environmental regulation are at a disadvantage in their competition with firms that operate production facilities in jurisdictions with less costly requirements.3 9 Therefore, nations might feel the competitive pressure to lower environmental standards and thereby make themselves a more attractive home to business. In contrast with environmental law, efficiency-style competition law40 does not handicap business; at least it is self-consciously intended not to be handicapping. Efficient, responsive firms do not have to pull punches or pay a tax. A business environment with an efficiency-based competition law should be attractive and inviting, at least to those business people who are betting that they will succeed on the merits. But let us flip the paradigm for, as indicated, in the world antitrust community there is no agreement on what is the top ("good" law) and what is the bottom. This Essay thus far has assumed that law designed to promote efficiency, that gives firms freedom to do that which will lower their own costs, is at the antitrust top. There is another conception. Take as an example the abuse-of-dominance law of the European Union4 ' and of the many countries of the world (most countries with antitrust law) that adopt the E.U. model. In these jurisdictions, dominant firms abuse their dominance if they unfairly exclude or exploit smaller firms. This Essay assumes that countries that choose the E.U. model do so because for them it is the top.42 From this perspective, U.S.-style antitrust law could trigger a race to the bottom, that is, pressure on the European Union and others to degrade their law so as not to disadvantage their own businesses in world competition. Here is a scenario, through the eyes of a hypothetical European who embraces European-style competition law: E.U. abuse of dominance law is good for society. It maintains the right economic, fairness, and governance values, which are good for Europe and good for the world. But given the globalization of markets, Europe cannot maintain this system unless the United States adopts it too. Otherwise European businesses will pay higher costs than do American firms, American firms will outcompete European firms, and investment will gravitate to American shores. Europe might be forced to downgrade its law to the American standard-soulless, short-term aggregate efficiency based on assumptions of well-functioning markets. To the extent that Europe stands its ground, the competition it faces from lower-cost American firms is unfair competition. Perhaps this perspective is neither hypothetical nor entirely altruistic. The European Union has a policy to require hopeful E.U. members to adopt (to "approximate"), more or less, into their national legal systems, the major bodies of law of the European Community, prominently including competition law.43 The policy is designed to create common conditions of competition at high standards44 and equalize (i.e., raise outsiders') costs. Thus, the European Commission explains: Another reason for legislating at the Community level has been the need to create and maintain equal conditions for economic operators. Competition could be distorted if undertakings in one part of the Community had to bear much heavier costs than in another and there would be a risk of economic activity migrating to locations where costs were lower.... The implementation of high common standards of protection is among the Union's objectives and at the same time helps to ensure this "level playing field."'45 Given U.S. efficiency-based law, the European Union may regard itself as caught in a race to the bottom. Perhaps responding to the pressure on its businesses, E.U. law is converging with U.S. law in various important respects.46

## Trade DA

### Trade/Protectionism DA---Core---2AC

#### Trade’s down and protectionism’s up.

Marco Annunziata 21. Co-Founder of Annunziata + Desai Advisors and former Chief Economist at General Electric and Unicredit, 6/28/21. “Covid-19 shifts pattern of globalization.” https://www.omfif.org/2021/06/covid-19-shifts-pattern-of-globalisation/

Globalisation is undergoing a number of profound structural changes that we are only beginning to understand.

Global trade has diminished in importance. It was a major driver of global economic growth between the early 1990s and the onset of the 2008 financial crisis. Trade expanded at an average annual rate of 7% between 1992-2006, almost double the 3.7% average growth rate of global gross domestic product.

In the ten years after the financial crisis, the world economy expanded at almost the same pace, 3.5%, but global trade grew at a significantly lower 2.5%; it was no longer the primary driving force. The pandemic then caused a disproportionately severe shock to trade, which last year contracted by 5.5%, helping shrink the global economy by 3.3%.

Several factors combined to cut global trade.

Rising incomes in China and other emerging markets eroded the labour cost advantage. When companies decide where to open a new factory, cheap labour is no longer the predominant factor.

Protectionism has been on the rise. Even before former US President Donald Trump made trade wars fashionable, many countries had been resorting to a wide arsenal of trade barriers, from tariffs to local content requirements.

The pandemic has underscored the vulnerability of global supply chains to shocks that can come in a variety of flavours, from natural disasters to geopolitical tensions.

The pandemic was the most severe and unexpected issue; it came on top of ongoing disruptions to trade and caused havoc in domestic production sectors. The consequences have been staggering. If you are in the US and want to order a new car today, you’ll probably have to wait a year for delivery. If your fridge breaks down, good luck finding a new one. When Federal Reserve Chairman Jay Powell says he’s confident these problems will sort themselves out in a few months, a lot of people in the corporate world must be rolling their eyes.

Key raw materials are also rising in both economic and geopolitical importance. Technological innovation is making some raw materials a lot more sought after than ever. Lithium is essential for the development of batteries and electric vehicles. Rare earth metals are crucial for electronics, clean energy and the military. Titanium is needed in aviation, space technology and health care.

In short, a limited number of natural resources hold the key to industries that will drive prosperity and guarantee national security in the coming decades. But reserves and production of these natural resources are unevenly distributed, often concentrated in countries such as China and Russia. This has encouraged many countries to adopt an active strategic approach, where natural resources and supply chains become a geopolitical asset. China, for example, has made no secret of its goal to achieve global leadership in most high-tech industries.

Alongside these considerations, industrial corporates are changing their strategies. They have already started to react to the new global situation by striving to make their supply chains more flexible and resilient. This means making supply chains more local. They are taking advantage of innovations like manufacturing platforms that provide real-time access to a wider range of suppliers and 3D printing that allows for smaller-scale and more distributed production. This has begun to drive reshoring of production and jobs to the US and other developed economies. Some corporates are also working to develop reserves of strategic natural resources in the US. Western governments are taking heed, prioritising investment in infrastructure as well as research and development to support domestic investment and innovation.

These changes are persistent and mutually reinforcing. Governments across the globe are showing extreme caution and reluctance to relax the myriad restrictions imposed in response to the pandemic. In the end, Covid-19 will have disrupted our economies and lives for at least two years. Fear of a new pandemic will influence individual and economic behaviour for much longer.

The economic and geostrategic competition between the US and China will dominate the global scene for the next decades. The rediscovered importance of national economic priorities is also here to stay. International media like to showcase the return of globalist leaders like President Joe Biden in the US and Prime Minister Mario Draghi in Italy in contrast to the demonised populist trend epitomised by Trump and Brexit.

But the truth is that governments will remain a lot more focused on local jobs and incomes than ever before, especially once they exhaust the current scope for sustaining local living standards through debt financed fiscal handouts.

#### If COVID doesn’t trigger their impacts, nothing will.

Pepita Barlow et al. 21. Assistant Professor of Health Policy at the London School of Economics and Political Science, with May CI van Schalkwyk, MPH, Prof Martin McKee, DSc, Prof Ron Labonté, PhD, and Prof David Stuckler, PhD, February. “COVID-19 and the collapse of global trade: building an effective public health response.” https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(20)30291-6/fulltext

The COVID-19 pandemic is primarily a health crisis, but it has become clear that it has ramifications that extend to many aspects of the international order. International trade is especially hard hit; global merchandise trade recorded its largest ever one-period decline in the second quarter of 2020, falling 14·3% compared with the previous period.1 Although there has since been a partial rebound as lockdowns eased during summer in the northern hemisphere, total global merchandise trade for 2020 is forecast to fall by 9·2% in 2020, and a recovery to the precrisis trend is unlikely for several years. These changes to the global trading landscape have wide-ranging consequences for physical and mental health, as they affect supplies of drugs and medical equipment, nutrition and food security, and government income necessary to pay for health services.

To understand the possible health consequences of this evolving situation and how best to respond, it is first necessary to understand the reasons why trade is declining. Although most economic shocks are precipitated either by reductions in demand (eg, due to bank failures and income losses) or supply (eg, with sudden increases in prices and rising production costs), COVID-19 has created both situations simultaneously. For example, by April 24, 2020, more than 80 countries and customs territories had introduced export prohibitions or restrictions as an immediate response to the pandemic.2 In a world characterised by integrated and often just-in-time manufacturing processes, these actions caused marked reductions in the supply of manufactured goods, initially in China, but then elsewhere. Labour shortages at ports, caused by the pandemic, further slowed the movement of goods. Meanwhile, workplace closures in many countries and subsequent wage losses reduced demand for retail goods and traded services. Many of these trends are expected to continue as further lockdowns are introduced in response to second waves of infections.

#### Trade’s resilient.

Stephen Olson 21. Research fellow at the Hinrich Foundation, 8/12/21. “How trade’s resilience defies expectations amid coronavirus and global tensions.” https://www.scmp.com/comment/opinion/article/3144511/how-trades-resilience-defies-expectations-amid-coronavirus-and

Scepticism about trade has been intensified by the Covid-19 pandemic. Countries and companies are now aggressively looking to reduce trade risk through more localised production and less trade.

Given these sobering realities, one might have reasonably expected to see a sharp decline in trade. In defiance of most projections, though, trade has held up surprisingly well.

Given the fallout from the pandemic and rising protectionism, the World Trade Organization estimated in June last year that global trade could fall by as much as 32 per cent in 2020. Yet, the actual decline was roughly 5 per cent. Given the broader macroeconomic environment, in which overall demand was dampened by a 3.8 per cent reduction in global GDP, trade remained buoyant.

Of course, specific circumstances produced eye-catching trade reductions for individual countries. Japanese exports slumped to their lowest level in 11 years in 2020, and German exports were down 9.3 per cent.

While these apparent doomsday scenarios for trade dominated the headlines, they masked the real story. Despite the headwinds, trade took a beating but kept on ticking. What explains the surprising resilience of trade?

Bilateral tariff and non-tariff barriers have proliferated. These restrictions can sometimes be effective in accomplishing their primary objective of diminishing imports from the targeted country. But in many cases, their overall effect is to redirect rather than block trade.

## Iran Politics DA

### AT: PC

#### Biden’s PC fails- tons of examples prove he lacks the ability to get his agenda no matter how hard or what tactics he tries

Ryan Lizza, 4-1-2022, Chief Washington Correspondent for POLITICO. "POLITICO Playbook: Biden’s sophomore slump," POLITICO, https://www.politico.com/newsletters/playbook/2022/04/01/bidens-sophomore-slump-00022263

For JOE BIDEN, this was one of those weeks that demonstrated the limits of the powers of the presidency.

Political scientists often like to rib pundits and the public for having a so-called “Green Lantern” view of the presidency, a theory defined by Dartmouth’s Brendan Nyhan as “the belief that the president can achieve any political or policy objective if only he tries hard enough or uses the right tactics."

In reality, presidents operate under enormous constraints that often make them seem feckless in the face of intractable problems.

The news at the end of this week makes it clear that Biden has entered the “long slog” period of his first term. The bold ambitions of year one have been downsized. And even with more modest goals, unifying Democrats in Congress has become tougher — and winning over Republicans harder — than ever. Many problems, like inflation, don’t have readily available solutions. And even when Biden is able to act, like on immigration, his choices are politically perilous.

Biden’s sophomore slump truly set in this week:

— Covid relief. The Senate neared a deal late last night on badly-needed funds to continue to address the pandemic. Biden wanted $22 billion, and he wanted the money included in the recently enacted government funding bill. Congress declined both requests. The current deal calls for just $10 billion and has taken weeks of haggling.

Sarah Ferris, Burgess Everett and Jennifer Scholtes: “The sum — the result of days of negotiations between senior senators of both parties — would leave out a major ask from the White House. It does not include $5 billion in global vaccine efforts, drawing sharp complaints from many Democrats about the nation’s preparedness to fight the pandemic abroad. Lawmakers are now talking about a figure closer to $1 billion in vaccine aid.” Some House Democrats are unhappy and could scuttle the deal.

— Gas prices. Biden spent part of Thursday announcing a new plan to release 1 million barrels of oil per day from the Strategic Petroleum Reserve for the next six months. It was difficult to find any analyst who believed the move would have a meaningful effect on prices — including Joe Biden.

AP: “The president said it was not known how much gasoline prices could decline as a result of his move, but he suggested it might be ‘anything from 10 cents to 35 cents a gallon.’ Gas is averaging about $4.23 a gallon, compared with $2.87 a year ago, according to AAA.”

Ben Lefebvre notes that this is the third release from the reserves in the past five months and would amount to about 5% of daily demand.

— Immigration. In one area where Biden does have the power to act, his decision is dividing Democrats and creating a political opportunity for the GOP.

WaPo: “The Biden administration’s plan to end a pandemic order barring many migrants from entering the United States could trigger a rush of crossings at the border with Mexico — threatening to exacerbate a political liability for Democrats ahead of November’s midterm elections.

“Top Democrats on Thursday lashed out at the administration and each other over the fate of an emergency order that the Biden and Trump administrations have used to expel undocumented immigrants during the pandemic, with some arguing for a quicker policy change and others warning not to move ahead. Republicans pounced on President Biden, accusing him of inviting chaos and danger.”

Here’s how Sen. JOE MANCHIN (D-W.Va.) reacted to the news: “Oh my goodness. Just watch the news y’all put out every day, what’s coming across.”

And here’s how Sen. BOB MENENDEZ (D-N.J.) reacted to Manchin’s reaction: “Let’s not adopt the ‘they are not sending their best’ hate speech from the right, Joe.”

— Biden’s domestic agenda. There was action in the House yesterday: Democrats, joined by 12 Republicans, passed a bill to limit the cost of insulin to $35 a month. But the smallness of that bipartisan victory served to underscore how neutered Biden’s agenda now is.

NYT: “[T]he insulin bill represents a substantial scaling back of Democratic ambitions to tackle high drug prices for all Americans. A broader prescription drug package, written as part of the $2.2 trillion social spending and climate bill that has stalled in the Senate, would limit price increases on all prescription drugs, improve the generosity of Medicare’s drug coverage, and allow the government to negotiate directly on the price of some drugs used by Medicare patients, while also limiting insulin co-payments.

“Other parts of the broader bill would expand health insurance coverage, extending insulin coverage to diabetes patients who are uninsured. The bill that passed the House on Thursday would not improve the affordability of insulin for people who lack health insurance.”

The small-ball insulin bill so far doesn’t have the support of the 10 Republicans that it would need to pass the Senate.

— The DAVID WEIL fiasco. On Wednesday night, Biden lost a vote to confirm Weil, his nominee to run the Labor Department’s Wage and Hour Division, when three Senate Democrats joined all 50 Republicans in opposition.

This kind of thing just doesn’t happen.

“Failed nomination votes on the floor are practically unheard-of,” noted our colleagues at Congress Minutes. “Nominations without sufficient support are usually pulled beforehand to save the president and his party the embarrassment.” A failure like this suggests a massive blindspot in the congressional affairs office at the White House and/or a sense among some Senate Democrats that there is little to fear — and perhaps much to be gained — from opposing Biden.

#### Biden is spending his PC on covid relief

Sheryl Gay Stolberg and Emily Cochrane, 3-30-2022, "Covid Live Updates: Biden to Appeal to Congress for Key Aid, Warning U.S. Progress Is at Stake," New York Times https://www.nytimes.com/live/2022/03/30/world/covid-19-mandates-cases-vaccine

President Biden will step up the pressure on Congress to approve billions of dollars in emergency coronavirus relief aid, using a speech at the White House on Wednesday to deliver what an official described as an urgent and direct message that will warn that U.S. progress against Covid-19 would be at severe risk if Congress fails to act.

Mr. Biden will also spotlight a new one-stop-shopping coronavirus website, covid.gov, aimed at helping Americans navigate access to testing, treatment, vaccines and masks, and to assess the risk of Covid-19 in their neighborhoods, according to the official, who spoke on condition of anonymity to preview the president’s remarks. The site went live Wednesday morning; Mr. Biden’s remarks were scheduled for 1:30 p.m. Eastern time.

### Iran deal fails

#### Iran deal fails

Dalia Dassa Kaye, 3-4-2022, adjunct political scientist at the nonprofit, nonpartisan Rand Corp. and a senior fellow at the UCLA Burkle Center for International Relations. "Op-Ed: Reviving the Iran nuclear deal is a start, but a lot has changed since 2015," Los Angeles Times, https://www.latimes.com/opinion/story/2022-03-04/iran-nuclear-deal-israel-russia-u-s-joe-biden

Yet even if negotiations succeed, the post-deal environment could be much more unstable than it was seven years ago. There are some important gains to be had, such as renewed limits and inspections on Iran’s nuclear program; there are nearly no restraints at all right now. A forum where Russia and the West continue cooperating may also be a bonus. And expanding nuclear nonproliferation agreements seems more critical than ever at a time when Putin has put Russia’s nuclear forces on alert.

But if expectations were low about the original deal’s ability to transform and stabilize the region, expectations could be even lower this time. Trump’s withdrawal from the 2015 deal and the subsequent Iranian nuclear violations and military escalation have altered the region for the worse. Several challenges thus remain even if the Vienna negotiations succeed.

First, President Biden’s ambitions to achieve a “longer and stronger” deal to build on the 2015 terms seem unrealistic. At this stage, just salvaging the original constraints would be an achievement.

A revived deal might not be what Israeli Prime Minister Naftali Bennett disparages as a “shorter and weaker” deal, which he claims would expire within 2½ years, or in 2025. In reality, many of the constraints in areas including uranium enrichment levels and stockpiling, as well as inspection mechanisms, were set to last up to 15 years; some aspects of the deal were indefinite. A revived deal could meaningfully delay Iran’s nuclear progress by more than 2½ years.

But from the start, neither the Biden administration nor the new hard-line Iranian leadership under President Ebrahim Raisi has been in a hurry to negotiate. Both sides face considerable domestic opposition to reviving an agreement.

A revived deal might exclude some important issues such as missiles, which have become a dire military threat on their own even without being linked to nuclear capacities. Had a nuclear agreement been in effect since 2015, perhaps the signatories could now be building on it to address such concerns, rather than starting over.

### No Iran-US War

#### No risk of Iran war---Biden will find an off-ramp and Iran has no incentives to escalate.

Michael C. Horowitz 20. Professor of political science and the interim director of Perry World House at the University of Pennsylvania. \*\*Elizabeth N. Saunders, associate professor in the School of Foreign Service at Georgetown University, and a nonresident senior fellow at the Brookings Institution. \*\*Article cites Dan Reiter, professor of political science at Emory University. “War with Iran is still less likely than you think.” The Washington Post. 01-07-2020. https://www.washingtonpost.com/politics/2020/01/07/war-with-iran-is-still-less-likely-than-you-think/

But as other analysts have noted, fears of World War III are overblown. Even after this escalatory move, many factors that made war between the United States and Iran unlikely in June remain unchanged. There will no doubt be consequences — but general war remains unlikely.

But could the United States and Iran stumble into war?

Although the killing of Soleimani was a deliberate act by the United States, much fear about escalation between the United States and Iran surrounds the potential for a conflict spiral through miscalculation.

Fortunately, this type of escalation is rare. As Dan Reiter explained here at The Monkey Cage during a spike in tensions with North Korea two years ago, “powder kegs” rarely explode into war by accident.

Those worried about accidental war may also point to reports that the Trump administration developed the plan to kill Soleimani in haste, suggesting there was insufficient effort to think about how Iran might respond.

But if and when it does respond, Iran’s action is likely to be highly considered. This may be worrisome — but it’s not war by accident or miscalculation. If Iran’s leaders take an action in response that triggers a general war, it will probably be because they decided it was a risk worth taking.

Retaliation by Iran is not the same as war

It’s important not to move the goal posts for how we define war. At the same time, it’s also key to distinguish tit for tat between the United States and Iran from a general war involving ground troops.

This is not to deny the risk of a damaging retaliatory move from Iran that may result in American casualties and lead to long-term complications for the United States in the region.

But even retaliation may not come right away. Suzanne Maloney of the Brookings Institution argues that Iran is likely to “bide its time” despite anti-American protests in Iran during the widespread mourning for Soleimani.

Domestic politics still act as a brake — in both the United States and Iran

As TMC editor Michael Tesler wrote over the weekend, war with Iran is unpopular in the United States and is unlikely to help Trump win reelection. And Trump has long said he doesn’t want a Middle East war.

Similarly, despite short-term domestic pressures to retaliate, Iran’s leaders want to stay in power and do not want to risk their regime in a costly war — and war between the United States and Iran would probably be very costly.

So how did we get here, and what happens next?

Back in June, we wrote about one risk that could increase the odds of war: “if Trump’s hawkish advisers present an option that seems like it could be kept limited, but actually carries a strong likelihood of escalation.” According to news reports, Trump chose the option to kill Soleimani on short notice, surprising even some of his advisers and setting off a planning scramble.

But we also noted that Trump has backed away from tough stances before. If the past is any guide, having now looked tough, Trump may seek an off-ramp. And as Sarah Croco, Jared McDonald and Candace Turitto have pointed out here at TMC, Trump is unlikely to be punished if he flip-flops and backs down.

And even if Iran strikes back — as it says it will — it is also likely to try to avoid escalating the conflict significantly. Finding such a finely calibrated option is, of course, a difficult problem, but neither miscalculation nor domestic politics are the most likely drivers of further escalation in this case.

What might prevent the two sides from finding the offramps? One factor is if the administration, with Mike Pompeo at the understaffed State Department leading the hawkish charge, does not fully consider diplomatic options or engage in a robust set of invisible, back-channel consultations that would produce such options.

The stakes are high

Another concern is that this crisis has higher stakes for Iran than last summer’s tanker or drone encounters. We know that war can occur even if both sides don’t want it when one side doesn’t believe the other’s commitment not to attack in the future. If Iran doesn’t believe the United States will really leave its regime alone, it might frame the stakes of the Soleimani killing in the strongest possible terms, planning for significant escalation.

But that seems unlikely, given that the United States is far more powerful than Iran and a general war would probably mean the end of Iran’s regime. And Iran’s leaders might alternatively believe Trump does not want a war, especially given his publicly stated interest in reducing the U.S. military’s footprint in the Middle East. Indeed, a challenge for Iran’s leaders is that they may agree with commentators who have noted that Trump has not made clear what he wants.

Blowback may be coming, and the U.S. strike against Soleimani may increase the risk of bad outcomes short of an all-out war. Those are reasons for concern. But it’s critical to distinguish such consequences from a general war.

# 1AR

## DPA

### Perm---1AR

#### 2] The perm makes acts per se illegal and allows monitors which is their only internal link to the net benefit---the cp either results in the aff and doesn’t use DPA or uses DPA without resulting in the aff but perm solves both

2NC Bone, 20 – Assistant Professor of Management at Saint Joseph’s University

[Jeff Bone, "Antitrust Reform: Implications of Prospective Threats by Digital Platforms to Relocate Abroad," Belmont Law Review, Vol. 8, 4-12-2020, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3574303, accessed 6-30-2021]

There is another route for the DOJ to consider that falls somewhere between full throttle litigation and simply ending these investigations that can serve the interests of both parties. For example, the DOJ could offer Google a deferred prosecution agreement (DPA) in order to resolve the existing antitrust investigation that they are undertaking into the company.89 DPAs serve the dual purpose of punishing corporations without passing on the punishment to the public and they allow the corporation to avoid the stigma of a federal prosecution.90 Additionally, it is the usual practice of the DOJ to employ corporate monitors as part of any DPA. A monitor’s role involves ensuring the corporation adheres to the stipulations in the DPA.91 The specific terms of the monitorship are laid out in the DPA, which allows the DOJ and the corporation to tailor the monitorship to the specific misconduct.92

Monitors are known by different names including, among others, independent consultants, independent compliance consultants and corporate compliance monitors.93 Since the early 2000s, U.S. enforcement authorities have increasingly utilized corporate monitor programs to help promote legal compliance and reduce future violations.94 These enforcement agencies include various government regulators such as the DOJ, the Securities Exchange Commission, the Drug Enforcement Agency, the Environmental Protection Agency, the Federal Highway Safety Administration, and the Food and Drug Administration.95

Monitors report their findings regarding compliance to both the regulator and the corporation and make recommendations for improvements during the period of oversight. These monitorships typically last two to three years and the cost is paid by the corporation.96 The fact that the corporation is burdened with the cost of the program, as opposed to the government regulator, is seen as a benefit to tax payers. Further, a corporate funded monitor is a more efficient means of regulation as compared to the often protracted litigation efforts that are required when antitrust disputes proceed to trial.97 For this reason, both sides may find a corporate monitor program appealing simply to avoid the cost and uncertainty of a trial.

Other benefits on the use of DPAs and corporate monitors are that they can provide an individualized set of recommendations for the corporation, as opposed to a generic list of compliance goals. This allows the regulator and corporation to “tailor the terms of the monitorship as necessary to effectuate optimal compliance with the law and ethical behavior.”98 Similarly, a DPA may be a **valuable alternative** to criminal convictions or civil regulation because a monitor can address “firm-specific information about corporate defects” that can be cured through a monitor program.99

DPAs and corporate monitor programs have also been suggested to be more effective than fines.100 For instance, unlike fines, the appointment of a monitor usually results in structural changes that have a rehabilitative effect within an organization. This is likely because most monitors have the power to fire employees and to create new compliance programs.101 As such, during the course of the monitorship, employees are incentivized to take directions from the corporate monitor as opposed to their existing managers.102 This change in supervision and oversight cultivates a motivation to implement the objectives of the DPA among the organization’s workforce under the auspices of the corporate monitor.

Despite these benefits, there have been criticisms about the use of DPAs and corporate monitors. For one, the monitor’s dual responsibility to report findings to the corporation and the regulator suggests a lack of clarity in the scope and responsibilities of the monitor.103 Second, the process may not be transparent, as the content of a DPA is typically not reviewable by judges nor subject to appeal.104 It also appears that DPAs and corporate monitor programs are on the decline. For example, in 2018, there was just one DPA that was accompanied by an independent monitor.105 However, the reduction in the use of corporate monitors is likely on account of a change in policy, under the Trump Administration, to utilize monitors more selectively.106 However, this change in policy does not negate the benefits of corporate monitors, such as the rehabilitative effects within organizations and the ability to tailor the monitorship to specific corporate misconduct.

For these reasons, in terms of cultivating compliance within the enterprise it is argued that the appointment of a corporate monitor within Google as part of a DPA will prove much more effective than the introduction of new federal antitrust legislation. Moreover, successful corporate monitor programs may have beneficial effects beyond antitrust compliance and reach into areas such as the promotion of stakeholder-friendly corporate governance.

To this end, one condition of the proposed DPA should be to require Google to invoke a pledge similar to that made by Airbnb in early 2020 in which the company laid out a vision to operate for the benefit of all stakeholders.107 Specifically, Airbnb identified five stakeholders including guests, hosts, communities, shareholders, and employees. This commitment appears to be actionable and meaningful as it includes tying executive bonuses to performance on Airbnb’s social goals, and it calls for the creation of a stakeholder subcommittee on the board of directors. Currently, Google does not have comparable stakeholder pledges regarding its corporate governance strategy.108

In a similar way to Airbnb, Google could be mandated to introduce its own commitments to stakeholders. This could include a list of identified stakeholders and a strategy on how the corporation can best serve the goals of these stakeholders beyond profit seeking activities. If this mandate, among other requirements under the DPA, is met by Google in a prescribed time period, the DOJ could agree to suspend antitrust enforcement and eventually end the corporate monitor program. The ending of the corporate monitorship could be conditional on Google agreeing to inspections and audits in the future to ensure that the adjustments made under the monitor program continue.109

### **Stakeholders Fails---1AR**

#### Stakeholder capitalism fails---can’t balance competing interests and companies can still funnel money to shareholders in private.

Steve Denning 20. Senior Contributor to Forbes and worked at the World Bank, where I held many management positions, including director of knowledge management (1996-2000). "Why Stakeholder Capitalism Will Fail." Forbes. 1-5-2020. https://www.forbes.com/sites/stevedenning/2020/01/05/why-stakeholder-capitalism-will-fail/?sh=1aa0f13785a8

---NOTE: MSV means “maximizing shareholder value.”---

Yet stakeholder capitalism is not a new idea. It was launched by the 1932 management classic, The Modern Corporation, and Private Property by Adolf A. Berle and Gardiner C. Means. The idea was that public firms should have professional managers who would balance the claims of different stakeholders, taking into account public policy. For the next 40 years, it was the general approach of big business in the U.S.

When many big firms attempted to implement it over decades, the perpetual need throughout the organization to keep balancing conflicting claims among stakeholders led to mass confusion and what came to be known as garbage can organizations. This in turn eventually provoked a resort to MSV, the very thing for which big business is now being assailed.

The fatal flaw in 20th Century stakeholder capitalism was that it offered unviable guidance on what is “true north” for a corporation. If big business attempts afresh to implement stakeholder capitalism, it seems likely to fail for this very reason.

Stakeholder Capitalism As A PR Front

What’s going on here? Cynics have concluded that stakeholder capitalism is nothing more an elaborate public relations stunt espoused by big business to get through the current PR crisis. Business, they say, will go on doing what it has done since time immemorial: making money for itself.

The attraction of stakeholder capitalism as a public stance is that it doesn’t commit big business to do anything in particular. Firms can go on privately shoveling money to their shareholders and executives, while maintaining a public front of exquisite social sensitivity and exemplary altruism.

## Politics DA

### No Link---1AR

#### A] Budget proposal wrecks unity

Cleve R. Wootson Jr. et al , 3-29-2022, with Annie Linskey and Marianna Sotomayor "‘It’s about the 30-second ads’: Biden budget offers a counter to GOP midterm attacks," Washington Post, https://www.washingtonpost.com/politics/2022/03/28/biden-budget-midterms/

Still, not all Democrats were satisfied. In the hours after Biden’s budget went public, it was clear that some of the fissures in the Democratic Party that helped doom Biden’s agenda last year still existed.

Sen. Bernie Sanders (I-Vt.) and Rep. Pramila Jayapal (D-Wash.) said they worried that the budget proposal would offer too much money for defense spending at the expense of other programs. “We do not need to raise the defense budget by another $31 billion,” tweeted Jayapal, the chair of the Congressional Progressive Caucus, adding that the United States instead needed to “make investments into our communities.”

#### B] Covid funding

Jacqueline Alemany, 3-10-2022, "Fight over coronavirus aid underscores tensions among Democrats," Washington Post, https://www.washingtonpost.com/politics/2022/03/10/fight-over-coronavirus-aid-underscores-tensions-among-democrats/

Chaos in the House: House Democrats hoped to spend this week unifying around an agenda and message they could sell to voters ahead of the midterm elections.

Instead, they spent Wednesday fighting with each other.

House leaders had to strip $15 billion in coronavirus-related aid the Biden administration wanted from a $1.5 trillion catch-all spending bill because some in their ranks, along with Republicans, objected to how the cost of the pandemic funds was being offset.

From Tony Romm and Marianna Sotomayor: “Republicans had demanded that the money be financed in full, resulting in a bipartisan deal that sourced the coronavirus funds from an existing pot set aside for state governments in the last stimulus law,” our colleagues write. "That ultimately upset a wide array of Democrats, however, since it threatened to revoke aid that their local governors and legislators had counted on. Some lawmakers even charged they were blindsided by the concessions made by their own party’s top brass."

With the covid funds jettisoned, House leaders spent the rest of the day and night scrambling to pass the spending package, which is needed to keep the government open and includes $14 billion in aid for Ukraine. The House will take up the coronavirus aid as a standalone bill next week without the offending offsets, but its fate is uncertain in the Senate.

The acrimony arrived as Democrats head to Philadelphia for a policy retreat to discuss the year ahead and unite around a strategy for November’s elections.

Simmering tensions

The kerfuffle was emblematic of some of the long-standing divisions the party has struggled with as it attempts to reset its policy agenda and how difficult it has been to pass ambitious legislation given the party’s razor thin majority.

While House Speaker Nancy Pelosi (D-Calif.) pushed back against the idea Wednesday was an avoidable fiasco — “Let’s grow up without this, okay? We’re in a legislative process,” she told reporters — there were already signs that the Philly retreat was not going to serve as a balm for the tensions in the party.

Several House Democrats aren't even bothering to attend the retreat, including a handful of “frontline” Democrats running for re-election in competitive districts, like Reps. Elissa Slotkin (D-Mich.) and Susan Wild (D-Pa.).

#### B] Biden can’t push anything---moderates want legislation and will backlash to EOs he inevitably passes

Rachael Bade and Eugene Daniels 3-31. ."POLITICO Playbook: Biden gets mixed signals from rival House Dem factions". POLITICO. 3-31-2022. https://www.politico.com/newsletters/playbook/2022/03/31/biden-gets-mixed-signals-from-rival-house-dem-factions-00021956

In a pair of meetings with two separate wings of the House Democratic Caucus on Wednesday evening, President JOE BIDEN received mixed messages over how to jump-start his stalled agenda, according to multiple sources familiar with the talks. — The context: In recent weeks, as action on key Democratic priorities has languished in Congress, progressives as well as some senior party leaders have pushed the president to more liberally use his pen to sidestep Congress and take executive actions to enact key campaign promises on everything from immigration to climate to student loans. — But that proposed strategy has caused heartburn among other Democrats, who worry about the potential for political blowback — not to mention concerns about those policies being rolled back the minute a Republican president is sworn in. Which brings us back to Wednesday, when Biden met with members of the House Progessive Caucus and, separately, the more centrist New Democrat Coalition. — The progressives asked Biden to take action unilaterally on a host of their top priorities, including “canceling student debt, raising the overtime threshold, lowering prescription drug costs, expanding renewable energy to decrease reliance on fossil fuels, and fixing the Affordable Care Act ‘family glitch’ to expand access to health care,” per a statement from the CPC. — The New Dems expressed caution on the EOs, and sought to appeal to Biden’s history as a legislator, urging him to continue banging heads together in Congress until a reconciliation bill passes. “Clearly, the president may be able to take actions, but we feel that for long-term durable policy, Congress needs to act,” New Dem leader SUZAN DELBENE (D-Wash.) told Playbook on Wednesday night. “We have the House, the Senate and the White House. There may be slim majorities, but we still have an important opportunity to make long-term change. This whiplash of things going back and forth [via executive action] doesn’t really help over the long term.” (More on this meeting below.)