# ADA Round 4 Wiki Doc

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### 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.

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A détente is especially desirable today in light of the severe stagnation in American wages. In the past thirty-five years, U.S. gross domestic product has all in all grown but the purchasing power of the average worker has barely changed.3 Labor’s share of national income declined precipitously in the 2000s, and in the five years after the Great Recession it was lower than at any point since World War II.4 Because most people get most of their income from labor, and because those who get most of their income from capital tend to be wealthy, this income shift has dramatic consequences for inequality. Economists and policymakers have advanced numerous explanations for this troubling trend ranging from the decline of unions, to tighter monetary policy, to increased trade liberalization, and more.5 One explanation that has received attention in recent years is an apparent epidemic of market concentration and flagging competition.6 A growing body of evidence suggests that over time fewer and fewer firms have come to dominate sectors across the economy.7 One study found that from 1982 to 2012, the share of sales by the sectors’ top four firms increased in manufacturing, finance, services, utilities, retail trade, and wholesale trade.8 Average markups above cost—a manifestation of market power—rose from eighteen percent in 1980 to sixty-seven percent in 2014.9 This increase in concentration is due, in part, to a growing wave of mergers. By one count over 325,000 mergers have been announced since 1985.10 That year, around 2,000 mergers with a value of a little over $300 billion were announced.11 In 2018, 15,000 mergers occurred—valued at just under two trillion dollars.12 The ability of firms to charge prices for their products or services that exceed the competitive level harms workers in their role as consumers, and the reverberating inefficiencies have consequences for wages as well.13 Workers are harmed more directly, though by firms with buyer power in labor markets. Instead of enabling firms to charge high prices for the goods or services they sell, buyer power—also known as monopsony power—allows firms to push wages below the level workers would receive in competitive labor markets. A recent study applied the Herfindahl-Hirschman Index (HHI), which is used to measure market concentration. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (“the agencies”) used HHI in merger review, and found that at least forty percent of job markets fell into the “highly concentrated” category, making them especially susceptible to anticompetitive behavior by employers.14 The hiring markets for the twenty-five percent most concentrated occupations in almost every commuting zone in the country have concentration levels nearly tripled the “highly concentrated” threshold.15 In commuting zones across middle America, the hiring market for nearly every occupation is highly concentrated.16 As discussed below, a concentrated labor market generally increases the buyer power of participants in that market. Recent research on labor supply elasticity, which is an indicator of vulnerability to employers’ market power, further challenges traditional assumptions of competitiveness in labor markets.17 Historically, antitrust enforcers have given far less attention to firms’ power as buyers than as sellers and have been particularly hesitant to check their power as buyers of labor. However, the tide may be beginning to change. Federal and state enforcers have begun to challenge anticompetitive labor contracts,18 and there is a small but growing body of precedent addressing increased buyer power in mergers.19 In 2016, the Obama Administration’s Council of Economic Advisors issued a report describing the problem of labor market power and encouraging greater attention to the issue by the antitrust enforcement agencies.20 Separately, then-Acting Assistant Attorney General Renata Hesse stated that antitrust enforcement efforts should not only be concerned with the welfare of consumers, but should “also benefit workers, whose wages won’t be driven down by dominant employers with the power to dictate terms of employment.”21 Nevertheless, to date, the agencies have never blocked a merger on the basis of harm to workers. There are many reasons that may account for the dearth of enforcement, including misunderstandings of the relationship between labor and antitrust laws, the momentum of precedent focused on seller-side harms, and the resistance of some to increased antitrust enforcement as a general matter.22 In addition to these practical and ideological impediments, mistaken intuitions about the economics of buyer power create obstacles for enforcement. At first glance it would seem that if firms use their buyer power to lower their costs, downstream customers are ultimately benefitted. Therefore, the consumer welfare standard, which underpins modern antitrust enforcement, would seem to counsel against intervention contrary to buyer power. In most cases, though, this intuition is simply wrong.23 More competitive labor markets are not just good for workers; they are good for consumers too. Clarifying the relevant interests at stake is crucial as policy reforms begin in earnest, and there is reason to believe that such reforms are on the horizon. Several politicians have recently advocated for greater antitrust scrutiny of labor markets. For example, in 2017 Senator Amy Klobuchar introduced a bill that would require the enforcement agencies to pay greater attention to buyer power in merger review.24 Senator Elizabeth Warren—who seeks more interventionist antitrust policy on many fronts25—and Senator Cory Booker—who in 2017 sent a letter to the DOJ and FTC citing concern with the failure of the agencies to address labor market power—have also taken up the cause.26 Labor market issues are also garnering increased attention from antitrust scholars.27 In an article published in 2018, C. Scott Hemphill and Nancy Rose argued for more interventionist merger policy directed at various forms of buyer market power.28 The same year, Suresh Naidu, Eric Posner and Glen Weyl published Antitrust Remedies for Labor Market Power, a sweeping analysis of the myriad options available to enforcers to promote more competitive labor markets.29 This legal analysis has been spurred by a growing body of empirical work on buyer power in labor markets.30 An array of scholars concluded that labor market power is a problem and one that antitrust institutions should do more to address. This paper similarly argues that buyer power—and specifically buyer power in labor markets—deserves greater antitrust scrutiny and, to that end, develops a framework for systematically evaluating labor market power in merger analysis. The enthusiasm of some progressive politicians for more interventionist antitrust policy has drawn skepticism from many antitrust practitioners and scholars who worry that reforms will unmoor antitrust policy from its foundational principles and turn antitrust enforcement over to political whims.31 At least with respect to labor market power, however, economic theory and empirical evidence support increased enforcement without any reform of the basic legal framework and without deviating from substantial consensus about the proper role for antitrust in the economy.

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

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Of course, this is not the world in which we live. Even the corner grocery store knows it can raise its prices a little bit without losing all of its customers, which is what the standard competitive theory suggests. More and more, firms have demonstrated high and increasing levels of market power (Philippon 2019; Stiglitz 2019). At the same time, the bargaining power of workers has weakened. It was never an equal match. An employer typically can find an alternative worker far more easily than a worker can find an alternative employer. This is especially so during slack periods in the labor market, or in places where there has been persistent unemployment. Leaving or losing a job is often greatly disruptive to workers and their families. There are mortgages to pay, children to feed, bills coming due. From the perspective of workers, jobs are not easily substitutable. As the chapters in this volume make abundantly clear, this imbalance of market power has consequences. It enables firms to raise prices for goods and services—lowering the real incomes of workers. It enables firms to suppress wages of workers below what they would be in a competitive marketplace—contributing to the inequality crisis facing the country. This economic inequality gets translated into political inequality, especially in our money-driven politics, resulting in rules that evermore favor big corporations at the expense of workers. The growing political inequality, in turn, hampers economic performance, and ensures that most of the benefits of our anemic economic growth go to those at the very top (Stiglitz 2012). In the middle of the 20th century, John K. Galbraith (1952) described an economy based on countervailing power—where labor institutions and government checked the power of large corporations and financial institutions. But policy choices over the past half century have upset this balance in ways that have weakened not only the workers, but also the economy and the country. This volume explores what has happened by concentrating on one understudied part of the problem: the labor market. Explaining the Weakening of Workers’ Bargaining Power Multiple factors have contributed to the weakening of workers’ bargaining position. This volume focuses specifically on the ways that employers have increased their market power over workers. Employer Concentration Permissive antitrust enforcement has promoted concentration across industries, reducing the number of employers—particularly those in rural areas (Stiglitz 2016).1 With few alternatives, workers must accept the low wages that large local employers offer. More precisely, limited competition by buyers—in this case, employers who buy labor services—gives rise to monopsony power.2 Any firm with monopsony power knows that if it hires more workers, it will drive up the wage. The marginal cost of hiring an additional worker is thus greater than the wage. The result is lower employment and lower wages than if there were a competitive labor market. The chapter by Marinescu in this volume forcefully documents the degree of monopsony in labor markets across the United States, especially in rural areas—areas where, not surprisingly, wages lag behind the rest of the country. Collusion Typically there is some, but limited, competition in the labor market, but it is competition that is insufficient to achieve anything approximating what would emerge in a truly competitive marketplace. But employers often do not like even this limited competition, because even some competition means that wages are higher than they would be with no competition. Thus, firms sometimes collude to not compete; and that collusion drives down wages. The incentives for firms to do this—if they can get away with it—are obvious: collusion has been a feature of capitalism from the start. As Adam Smith observed in The Wealth of Nations, “Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate. . . . Masters, too, sometimes enter into particular combinations to sink the wages of labour even below this rate. These are always conducted with the utmost silence and secrecy” (Smith 1776, book 1, chap. 8). Even then, Smith had observed an asymmetry not only in bargaining power, but also in capitalists’ response to workers’ attempts to redress the balance. When workers combine their forces, “the masters . . . never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers, and journeymen” (Smith 1776, book 1, chap. 8). This stance, of course, was markedly different from capitalists’ own behavior—not only in labor markets, but elsewhere, too. As Smith put it in one of his most famous statements, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices” (book 1, chap. 10). This issue is central: to redress the natural imbalance of bargaining power, workers have to band together and engage in collective bargaining. Unions are critical. But it is precisely because unions have been somewhat successful in redressing the imbalance that employers have worked so hard to suppress them, as I comment later in this introduction. Contracts In multiple contexts, business enterprises have not been satisfied with the increased profits brought by greater market concentration and occasional collusion. Businesses have figured out how to sustain and amplify those profits by the clever design of contracts that are conceived to inhibit competition in the labor market. This is another method that enables them to drive down wages still further.3 The chapters by Evan Starr and Terri Gerstein (this volume) provide ample evidence of the harmful impact of the misuse of labor contracts, noting in particular that often-used ruses distort the true impact on workers. Noncompete agreements, by definition, reduce competition. There might be some justification for not allowing employees with knowledge of trade secrets to go to work for competitors, but that hardly applies to employees of fast-food chains. Employers have also put into contracts provisions that weaken workers’ rights—and power—if a dispute arises. Inserting arbitration clauses into most contracts has moved dispute resolution out of the public domain— where it can be protected in the public interest, through transparency and basic standards—into private hands. This not only weakens workers’ position after a dispute arises, but also subtly changes the balance of power— making it easier for firms to take advantage of workers, knowing that their ability to get redress is so circumscribed. Making matters worse is a broader set of changes in legal frameworks that has hurt workers and consumers at the expense of corporations. For instance, the ability to bring class-action lawsuits, particularly in arbitration, has been greatly limited. Asymmetric Information The standard competitive theory assumes perfect information. Research over the past 50 years has explained how even a little information asymmetry can have a large impact. Employers have recognized this—they have figured out that such asymmetry can weaken workers’ position and lead to lower wages. They have responded by doing what they can to increase these asymmetries, sharing data with each other but insisting that workers keep their own compensation data confidential, and punishing employees who violate such confidentiality. The chapter by Harris in this volume describes the adverse effects of informational asymmetries, how firms have tried to increase these asymmetries, and what governments have done and can still do to promote transparency—and thus competition—in the labor market.

#### The plan solves inequality and wages.

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

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

#### 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.

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One of the oldest theories of nationalism is that states instill the nationalist myth in their citizens to divert their attention from great economic inequality and so forestall pervasive unrest. Because the very concept of nationalism obscures the extent of inequality and is a potent tool for delegitimizing calls for redistribution, it is a perfect diversion, and states should be expected to engage in more nationalist mythmaking when inequality increases. The evidence presented by this study supports this theory: across the countries and over time, where economic inequality is greater, nationalist sentiments are substantially more widespread. This result adds considerably to our understanding of nationalism. To date, many scholars have focused on the international environment as the principal source of threats that prompt states to generate nationalism; the importance of the domestic threat posed by economic inequality has been largely overlooked. However, at least in recent years, domestic inequality is a far more important stimulus for the generation of nationalist sentiments than the international context. Given that nuclear weapons—either their own or their allies’—rather than the mass army now serve as the primary defense of many countries against being overrun by their enemies, perhaps this is not surprising: nationalism-inspired mass mobilization is simply no longer as necessary for protection as it once was (see Mearsheimer 1990, 21; Posen 1993, 122–24). Another important implication of the analyses presented above is that growing economic inequality may increase ethnic conflict. States may foment national pride to stem discontent with increasing inequality, but this pride can also lead to more hostility towards immigrants and minorities. Though pride in the nation is distinct from chauvinism and outgroup hostility, it is nevertheless closely related to these phenomena, and recent experimental research has shown that members of majority groups who express high levels of national pride can be nudged into intolerant and xenophobic responses quite easily (Li and Brewer 2004). This finding suggests that, by leading to the creation of more national pride, higher levels of inequality produce environments favorable to those who would inflame ethnic animosities. Another and perhaps even more worrisome implication regards the likelihood of war. Nationalism is frequently suggested as a cause of war, and more national pride has been found to result in a much greater demand for national security even at the expense of civil liberties (Davis and Silver 2004, 36–37) as well as preferences for “a more militaristic foreign affairs posture and a more interventionist role in world politics” (Conover and Feldman 1987, 3). To the extent that these preferences influence policymaking, the growth in economic inequality over the last quarter century should be expected to lead to more aggressive foreign policies and more international conflict. If economic inequality prompts states to generate diversionary nationalism as the results presented above suggest, then rising inequality could make for a more dangerous world. The results of this work also contribute to our still limited knowledge of the relationship between economic inequality and democratic politics. In particular, it helps explain the fact that, contrary to median-voter models of redistribution (e.g., Meltzer and Richard 1981), democracies with higher levels of inequality do not consistently respond with more redistribution (e.g., Bénabou 1996). Rather than allowing redistribution to be decided through the democratic process suggested by such models, this work suggests that states often respond to higher levels of inequality with more nationalism. Nationalism then works to divert attention from inequality, so many citizens neither realize the extent of inequality nor demand redistributive policies. By prompting states to promote nationalism, greater economic inequality removes the issue of redistribution from debate and therefore narrows the scope of democratic politics.

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

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

Thank you Chair Beyer, Ranking Member Lee, and members of the Joint Economic Committee for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor Market Policy and the interim Chief Economist at the Washington Center for Equitable Growth. We seek to advance evidence-backed ideas and policies that promote strong, stable and broad-based growth. Core to this mission is understanding the ways in which inequality has distorted, subverted and obstructed economic growth in recent decades. Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality and made the U.S. economy less efficient. Reversing the trends that have led to a “second gilded age” is critical to encouraging a resilient economic recovery following the pandemic-induced economic crisis of 2020 and encouraging a healthy, competitive economy for the future. Introduction The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market and demonstrated that a rising tide does not lift all boats. Furthermore, economic evidence demonstrates how inequality results in an inefficient allocation of talent and resources while increasing corporate concentration that enriches the few while holding back the entire economy from its potential. Understanding the causes and consequences of the concentration of corporate power will guide policymaking in order to ensure that the economic recovery in the next phase of the pandemic will be broadly shared and ensure a more resilient economy. “Monopsony” is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of “monopoly,” but instead of having only one producer of a good or service, there is effectively only one buyer of a good or service, such as only one employer hiring people’s labor in a company town. Like in monopoly, this phenomenon is not limited to when a firm is strictly the only buyer of labor. Today I will explain the circumstances and effects of employers having significant monopsony power over the market and over workers. When employers have outsized power in employment relationships, they are able to set wages for their workers, rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers. This means paying them less than the value they contribute to production. One recent survey of all the economic research on monopsony finds that, on average across studies, employers have the power to keep wages over one-third less than they would be in a perfectly competitive market. Put another way, in a theoretical competitive market, if an employer cut wages then all workers would quit. But in reality, these estimates are the equivalent of a firm cutting wages by 5 percent yet only losing 10 percent to 20 percent of their workers, thus growing their profits without significantly impacting their business. It is not only important for workers to earn a fair share so they can support themselves and their families, but also critical to ensure that our economy rebuilds to be stronger and more resilient. Prior to the current public health crisis and resulting recession, earnings inequality had been growing since at least the 1980s while the labor share of national income has been declining in same period. This is cause for concern as recent evidence suggests that the labor share of income has a positive impact on GDP growth in the long-run. The unprecedented economic shock caused by the coronavirus pandemic revealed how economic inequality leads to a fragile economy, where those with the least are hit the hardest, amplifying recessions since lower-income workers typically spend more of their income in the economy. But the crisis also demonstrated how economic policy targeted toward workers and families can provide a foundation for growth. This is because workers are the economy, and pushing back against the concentration corporate power by providing resources to workers is the foundation for strong, stable and broadly shared growth. The Causes of Monopsony The concept of monopsony was initially developed by the early 20th century economist Joan Robinson, who examined how lack of competition led to unfair and inefficient economic outcomes. The prototypical example of monopsony is a company town, where there is one very dominant employer and workers have no choice but to accept low wages since they have no outside options. This is the most extreme case, but it is important to note that firms have monopsony power in any circumstance where workers aren’t moving between jobs seamlessly in search of the highest wages they can get. Firms can use monopsony power to lower workers’ wages any time workers: Have few potential employers Face job mobility constraints Can only gather imperfect information about employers and jobs Have divergent preferences for job attributes Lack the ability to bargain over those offers I will go through each of these factors in turn and demonstrate how labor markets are unique compared to other markets in dealing with competitive forces. While concentrated labor markets are not the norm, they are pervasive across the United States, especially within certain sectors or locations. When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing that their workers have nowhere to go to find a better job with better pay. (See Figure 1.) A study published in the journal Labour Economics by economists Jose Azar, Ioana Marinescu, and Marshall Steinbaum finds that 60 percent of U.S. local labor markets are highly concentrated as defined by U.S. antitrust authorities’ 2010 horizontal merger guidelines. This accounts for 20 percent of employment in the United States. Research by economists Gregor Schubert, Anna Stansbury, and Bledi Tsaka goes further by estimating workers’ outside options, or the likelihood a worker is able to change into a different occupation or industry. This study finds that even with a more expansive definition of job opportunities more than 10 percent of the U.S. workforce is in local labor markets where pay is being suppressed by employer concentration by at least 2 percent, and a significant proportion of these workers facing few outside options are facing pay suppression of 5 percent or more. As study co-author Anna Stansbury noted, “for a typical full-time workers making $50,000 a year, a 2 percent pay reduction is equivalent to losing $1,000 per year and a 5 percent pay reduction is equivalent to losing $2,500 per year.” Certain sectors are now very concentrated, such as the healthcare industry. In a paper by the economists Elena Prager and Matt Schmitt, they find that hospital mergers led to negative wage growth among skilled workers such as nurses or pharmacy workers. Consolidation and outsized employer power, alongside other phenomenon such as the fissuring of the workplace, may have broader impacts on the structure of the U.S. labor market when it affects the overall structure of the labor market, including the hollowing out of middle class jobs that have historically been a pathway for upward mobility.

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

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.

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

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

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

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

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

IV. Conclusion

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

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

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

#### Fraud funds terrorists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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

## T Scope/Exemptions

### Exemptions---2ac

#### a---The plan expands the area, so core laws deal with employer power. That’s a non-statutory exemption because Courts are ruling against labor.

Sanjukta Paul 19. Assistant Professor of Law, Romano Stancroff Research Scholar. “9 - The Case for Repealing the Firm Exemption to Antitrust (A Modest Proposal; or, a Response to Professor Epstein)”. from Part II - Labor Law Is Out of Date. Published online by Cambridge University Press: 01 November 2019 <https://www-cambridge-org.proxy.library.emory.edu/core/books/cambridge-handbook-of-us-labor-law-for-the-twentyfirst-century/case-for-repealing-the-firm-exemption-to-antitrust/E8BA98C6D6606A6E6BC1073291C3F277>

Professor Epstein argues in this volume and elsewhere for repealing the already limited economic coordination rights accorded to working people. In this chapter, I respond to his argument – and by extension, to the more general skepticism toward the coordination rights of working people. I begin by first questioning a different exemption from the putatively general norm about the “dangers of collective behavior.”Footnote6 Business associations themselves enjoy an almost unlimited exemption from antitrust law, one that is now treated as axiomatic. But it wasn’t always. The “firm exemption” is not based upon the text of the statute, and it was never endorsed by the legislators who conceived and drafted the Sherman Act. Indeed, they would likely have rejected it in its present form. At the same time, the legislative record is plain that legislators favored and intended coordination rights for working people to be preserved under the statute.Footnote7 But judges rewrote the Act in light of their own vision for the allocation of coordination rights – and that vision favored business firms as the locus of economic coordination and disfavored labor organizations.Footnote8

Professor Epstein’s “welfarist” argument against the labor exemption relies upon a normative benchmark given by “the competitive order” centered by Chicago School law and economics.Footnote9 But no such benchmark can exist without a definition – necessarily supplied by law, not economics – of the entities that are to engage in that competition.Footnote10 The law defines business firms, rather than, say, cartels, as the entities that are to engage in competition, thereby exempting their internal coordination from antitrust scrutiny. The other normative benchmark upon which Professor Epstein’s argument at least indirectly relies is the notion of freedom of contract, as embodied in the pre–New Deal common law of labor relations. However, the common law’s denial of coordination rights to working people was in fact justified in hierarchical, antiliberty terms – illustrating a more basic justificatory problem with the policy decision to abridge working people’s freedom of association from a liberal perspective.

#### The scope of competition law defines it goals.

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
* Should competition policy also include considerations of economic inequality or environmental effects?
* Can competition law remain effective if it is used for more than safeguarding fair competition?

#### That means the aff must change the consumer welfare standard.

Trevor Wagener 21. "The Curse of Tradeoffs: Neo-Brandeisians vs. Consumers". Disruptive Competition Project. 5-21-2021. https://www.project-disco.org/competition/052121-the-curse-of-tradeoffs-neo-brandeisian-antitrust-versus-consumers/

Neo-Brandeisians seek to replace the longstanding objective and principles-based framework of the consumer welfare standard in antitrust enforcement with an amorphous, process-based framework guided by an ethos one Neo-Brandeisian described as: “Big is bad. Just don’t let big firms merge. The end.” A movement dedicated to replacing a consumer welfare-maximizing approach with an assortment of competing goals has proven unable to offer a quantified, systematic cost-benefit analysis justifying such a radical change, instead relying upon anecdotal evidence and moving prose. The many goals of the Neo-Brandeisian approach are often rhetorically appealing, but the rhetoric hides a simple truth: When you target every variable, you effectively target none. Addressing a wide range of goals through antitrust policy requires de-emphasizing consumer welfare, creating fundamental tradeoffs expected to harm consumers relative to the status quo. The willingness to sacrifice consumer welfare in order to achieve other ends is a defining characteristic of Neo-Brandeisian antitrust. This is illustrated by concrete Neo-Brandeisian critiques, which typically emphasize perceived harms to businesses rather than harms to consumers. For example, the Neo-Brandeisian activist group American Economic Liberties Project (AELP) published a pair of policy briefs on May 3 that criticize online service operators for a litany of purported inconveniences to businesses over a combined 22 pages, but struggle to quantify any harms to ordinary consumers and users. Those few purported harms to consumers that AELP raised are distinctly qualitative rather than quantitative, consistent with the broader reluctance of prominent Neo-Brandeisian thinkers to conduct a rigorous quantitative cost-benefit analysis of their antitrust policy prescriptions relative to the consumer welfare standard.

## Adv CP

### Inequality CP---2AC

#### The plan’s legal standard is key to collective worker action.

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

4. The competition-solidarity conflict in light of labour exploitation theory: moving from consumer to citizen welfare

Economic models from opposing ends of the political spectrum perceive labour as a special and different production factor with idiosyncratic qualities, which makes it particularly open to exploitation. Labour's particular likelihood for exploitation is all the more worrying because labour power is attached to and cannot be separated from the worker. Additionally in the case of labour, unlike other production factors, there is not a zero-sum dynamic between the value attached to the production factor and consumer welfare. This is because, as exemplified in Marx's labour fetish theory, most consumers are also workers. As a result, when wages increase this benefits consumers in their economic role as workers even though they might have to pay a higher price for products and services.

As a result, economic theory suggests that, unlike commodities and other production factors, conflicts involving labour cannot be solved using simple economic cost–benefit analyses without any substantial adjustment. Similarly, worker solidarity and collective action need protection as common goods when they come into conflict with the principle of competition not only because this would be socially just but also because it would be economically sound.

As the analysis in the previous section illustrates, competition rules in the EU and the US are applied with a strict consumer welfare standard in mind, which overlooks the idiosyncratic characteristics of labour, and as a result, competition rules become a disciplining mechanism against collective worker action. Consequently, when dealing with the competition–solidarity conflict, courts and competition authorities need to follow a more inclusive legal standard that better reflects the characteristics of labour as a production factor. For this purpose, this paper suggests a citizen (rather than consumer) welfare standard that takes into consideration the economic effects of anti-competitive behaviour on consumers as well as workers. The citizen welfare standard could also be applied in other cases where competition rules and principles come into conflict with public interest or other policy objectives, such as cases involving industrial policy, environmental policy or other social objectives in which competition authorities and courts are yet to produce a consistent approach.102 As a result, in these cases, competition authorities and courts would be able to look at how the specific behaviour in question affects citizens in their entirety as a holistic group, rather than focusing on the interests of the narrow category of consumers.

Another significant advantage of following this approach is that this would not require a change in the law but only a change in the approach and the legal tests employed by courts and competition authorities when they deal with the competition–solidarity conflict.

In light of the citizen welfare standard, collective worker action would be shielded from competition law attack under labour exemption, because even though collective worker action could result in increased prices in the product market due to higher labour costs and decreased consumer welfare, it would also increase the welfare of workers, who will benefit from increased wages and better working conditions. An exemption standard that is based on an inclusive welfare approach will also save courts and competition authorities from disentangling who qualifies as an undertaking (in the EU) and whether or not worker organisations acted jointly with third parties (in the US), both of which result in imprecise and limited judicial exemptions that do not provide a secure harbour for collective worker action and render it particularly precarious for workers in casualised flexible arrangements to take collective action against their working conditions.

Similarly, in light of the citizen welfare standard, even if the effect of collusive employer behaviour on prices in the product market cannot be proven, a reduction in the welfare of workers in the production process, such as reduced wages, will be considered sufficient for the collusion in question to qualify as anti-competitive. Collusion between employers suppressing wages and other working conditions does not necessarily affect consumer welfare. Suppression of wages might even result in reduced prices and increased consumer welfare due to reduced labour costs in the short run but this comes at the cost of a negative effect on worker welfare.

This does not mean that courts should engage in a balancing analysis between consumer and worker welfare and investigate whether the effect on consumer or worker welfare is larger. In the light of the labour fetish theory, consumers and workers belong to the same group of people and an increase/decrease in consumer welfare with the resulting decrease/increase in worker welfare is most likely to be a transfer. Under the citizen welfare standard, an increase in worker welfare would be considered sufficient for the labour exemption to protect collective worker action from antitrust attack and a decrease in worker welfare would be considered sufficient for the employer collusion in question to be considered anti-competitive.

### AT: UBI---2AC

#### UBI doesn’t solve inequality.

Anna Coote 19. Principal fellow at the New Economics Foundation and and co-author of Universal Basic Income: A Union Perspective. “Universal basic income doesn’t work. Let’s boost the public realm instead” The Guardian. 05-06-19. https://www.theguardian.com/commentisfree/2019/may/06/universal-basic-income-public-realm-poverty-inequality

A study published this week **sheds doubt on ambitious claims made for universal basic income** (UBI), the scheme that would give everyone regular, unconditional cash payments that are enough to live on. Its advocates claim it would help to reduce poverty, narrow inequalities and tackle the effects of automation on jobs and income. Research conducted for Public Services International, a global trade union federation, reviewed for the first time **16 practical projects** that have tested different ways of distributing regular cash payments to individuals across a range of poor, middle-income and rich countries, as well as copious literature on the topic. It could find **no evidence** to suggest that such a scheme could be **sustained for all individuals** in **any country** in the short, medium or longer term – or that this approach could achieve lasting improvements in wellbeing or equality. The research confirms the importance of generous, non-stigmatising income support, but everything turns on how much money is paid, under what conditions and with what consequences for the welfare system as a whole. From Kenya and southern India to Alaska and Finland, cash payment schemes have been claimed to show that UBI “works”. In fact, what’s been tested in practice is almost infinitely varied, with cash paid at different levels and intervals, usually well below the poverty line and mainly to individuals selected because they are severely disadvantaged, with funds provided by charities, corporations and development agencies more often than by governments. Experiments in India and Kenya have been funded, respectively, by Unicef and Give Directly, a US charity supported by Google. They give money to people on very low incomes in selected villages for fixed periods of time. Giving small amounts of cash to people who have next to nothing is **bound to make a difference** – and indeed, these schemes have helped to improve recipients’ health and livelihoods. But nothing is revealed about their **longer-term viability**, or how they could be **scaled up to serve whole populations.** And there is a democratic deficit: people who get their basic income from charities or aid agencies have no control over how payments are made, to whom, at what level or over what period of time. The Alaska Permanent Fund, built from the state’s oil revenues, pays all adults and children a dividend each year – in 2018, it was $1,600 (£1,230). The scheme is popular and enduring; it has been found to produce some positive impacts on rural indigenous groups, but it makes no claim to sufficiency and **has done nothing to reduce child poverty or to prevent widening income inequalities.** Helsinki city centre Finland undertook a two-year trial, from January 2017 to December 2018, of modest monthly payments of €560 (£477) to 2,000 unemployed people – but the government has refused to fund further expansion. It told us little about UBI except that, when push comes to shove, elected politicians may balk at paying for a universal scheme. The cost of a sufficient UBI scheme would be **extremely high** according to the International Labour Office, which estimates average costs equivalent to 20-30% of GDP in most countries. Costs can be reduced – and have been in most trials – by paying smaller amounts to fewer individuals. But there is no evidence to suggest that a partial or conditional UBI scheme could do anything to mitigate, let alone reverse, current trends towards worsening poverty, inequality and labour insecurity. **Costs may be offset by raising taxes** or shifting expenditure from other kinds of public expenditure, but either way there are huge and risky trade-offs. Money spent on cash payments cannot be invested elsewhere. The more generous the payments, the wider the range of recipients, the longer the scheme continues, the less money will be left to build the structures and systems that are needed to realise UBI’s progressive goals. As this week’s report observes, “If cash payments are allowed to take precedence, there’s a serious risk of **crowding out efforts** to build collaborative, sustainable services and infrastructure – and setting a pattern for future development that promotes commodification rather than emancipation.” This may help to explain why UBI has attracted support from Silicon Valley tycoons, who are more interested in **defending consumer capitalism than in tackling poverty and inequality.**

### AT: Wealth Tax---2AC

#### A wealth tax won’t solve inequality---aff is key.

Ike Brannon 20. senior fellow at the Jack Kemp Foundation. “A Wealth Tax Is Not A Solution For Income Inequality” Forbes. 09-29-20. <https://www.forbes.com/sites/ikebrannon/2020/09/29/a-wealth-tax-is-not-a-solution-for-income-inequality/?sh=6353462b7f5b>

However, a wealth tax would **do nothing to help low-income earners** while **hurting the rest of the economy.** Wealth taxes are **difficult to administer** and—more importantly—invariably **reduce savings, investment, productivity, and economic growth.** A wealth tax imposes an annual tax based not on a person's income but on their net assets. For instance, the wealth tax advocated by Senator Bernie Sanders would impact only people who own more than $32 million of assets. Its rates would range from 1 percent at the bottom to 8% for wealth above $10 billion, and it would raise an estimated $4.4 trillion in ten years—more than the entire Biden plan. While the wealth tax champions aver that such a tax would only impact the wealthiest of the wealthy, a tax on wealth would be much more harmful than Biden’s proposed tax increases and would end up **reducing the wealth of everyone, rich or poor.** A good rule of thumb is that we get less of something if we tax it. Do we want to reduce the amount of capital the wealthy accumulate? The Democratic party has made reducing income inequality one of their key goals for the country, and it is one that should be a priority for everyone else as well. However, how we accomplish such a thing matters quite a bit. One salient observation from the last quarter-century is that when the unemployment rate gets below four percent, the wages of people at the bottom quintile start to increase precipitously. At that rate genuine labor shortages for low-skilled and entry level jobs develop, and firms must pay more to attract these workers—or else find people who have been out of the labor market and persuade them to enter, and possibly train them as well. This happened in the late 1990s and in the last couple of years it was again occurring. In 2019 Median Household Income increased by 6.8 percent, and for African Americans it went up by 7.1 percent. More importantly, the mean income for people in the bottom income quintile increased by nine percent, higher than anywhere else in the distribution. A **permanent increase in pay in the occupations of low-income households is infinitely preferable** than any commensurate increase in transfer payments. Successive governments abetted this increase beneficial development by quickly acting to ameliorate the effect of the financial crisis and then making economic growth writ large a priority across both Democratic and Republican Administrations. And after the economic expansion reached 7 years, wages at the bottom started to increase. This also describes our success at reducing inequality in the 1990s. A wealth tax short-circuits that process by merely reducing income at the very top of the distribution. While doing such a thing will, in fact, allow inequality measures to report significant progress, doing so would do **nothing by itself to improve living standards of people at the bottom** of the distribution, or make it easier for people to climb up the income ladder. It’s akin to losing weight by lopping off body parts—it achieves a numeric goal but is counterproductive for the overarching goal. Its advocates invariably counter by saying that if those trillions are spent effectively it would lead to steep gains in living standards, but **much of what they propose to spend that money on**—such as Medicare for all or free college tuition for everyone—**would do little to help them**. They amount to entitlements that would ultimately benefit middle class workers and above more than people at the bottom.

### AT: Infrastructure Plank---2AC

#### Infrastructure bank fails.

Charles Marohn 21. Founder and president of Strong Towns. He is a professional engineer and a land use planner with decades of experience. "A National Infrastructure Bank is a Stupid Idea." Strong Towns. 06-14-2021. https://www.strongtowns.org/journal/2021/6/14/a-national-infrastructure-bank-is-a-stupid-idea

The concept of a National Infrastructure Bank is being floated again as a way to address America’s infrastructure crisis. There is a bill in Congress and a well-connected lobbying organization pushing for its passage. There is the potential for half a trillion dollars to be put into the bank and then ten times that—$5 trillion total—to be spent through the bank, so this is not some modest or halfhearted approach. It’s a serious proposal with huge sums of money to be spread around.

A National Infrastructure Bank is a big idea. It appeals to those who want to see bold federal action on a wide range of items. It has the backing of many mayors, governors, economists, and infrastructure experts. And, as a bank, it has a veneer of financial prudence. It is a big idea.

It’s also a really stupid idea.

Let me make what I think is the strongest case for a national infrastructure bank (and I welcome alternative strong pro-bank arguments in the comments section below). There are good and profitable projects that the existing municipal bond market will either not fund or will deem too risky to fund at reasonable rates. It might be that the project is too big or complicated to be fully evaluated by investors. It might be that a two or three percentage point spread in interest rates may make the difference in whether the project is viable or not.

In these cases, a national infrastructure bank can step in and provide loans to local governments, utility boards, transit authorities, and other infrastructure management organizations so that they can complete those projects. Those borrowers will see a real financial return on those investments and use that return on capital to repay the loan, plus interest. Not only does it work out financially, but the economy is better off—among other objectives of the bank—and that just makes it all even better.

To me, that is the best argument. In 2021, it’s also a fairy tale.

Let’s start with the notion that worthy projects are having a difficult time getting funding. Just last week, MarketWatch ran an article titled “‘Food Fight’ in the municipal-bond market as demand devours all supply.” For those of you not familiar with bond markets, what this means is that there are not enough municipalities seeking to borrow money to satisfy all the investors with cash looking to invest. When too many investors are fighting over the chance to loan too few cities and other governments money, supply and demand means that interest rates for muni debt drops. That is what has happened, to record levels.

….in one section of the market, for high-yield munis, “there’s just not enough deals.” That was the conundrum facing the Invesco High Yield Municipal Fund, which announced in May that it would close to new investors.

Large funds are now essentially forced to buy any deal that comes out, Steeves said, leaving portfolio managers with little opportunity to distinguish themselves from competitors, and resulting in zero price discovery in that portion of the market.

Again, for those not familiar with the language of bond investing, “high-yield” means the riskiest loans, the ones where the governments are most impaired in their ability to repay the debt. Any insolvent local government can borrow as much money as they want right now with “zero price discovery” (which means they are getting ridiculously low interest rates).

There is no credible argument that can be made that a national infrastructure bank is needed to fill some liquidity hole

in the market. There is no entity in the infrastructure businesses unable to borrow all of the money they want. So, why do we need a new bank with trillions of dollars to lend out?

The other part of the fairy tale is the notion that there are worthy projects out there, investments that pay an actual financial return. There just isn’t, at least not at the scale that a national infrastructure bank would look to fund.

Let me make sure we are all on the same page with what an “actual financial return” is. Say your city borrows $1 million to install a new sewer pipe in the ground. A real financial return would mean that the city, once they deducted their expenses, had new revenue from the installation of that pipe sufficient to retire that $1 million debt, plus interest.

If those projects existed (and they really don’t anymore), they are easily funded. What cities are actually struggling with isn’t money for expansion but money for maintaining what they already have. It’s the backlog of past promises that is financially strangling them, and borrowing money from an infrastructure bank is not going to fix that insolvency problem.

For example, Flint, Michigan, can borrow all the money it wants right now and use that money to fix their lead pipes. They can borrow the money, they just have no means to pay it back. And since replacing lead pipes with non-lead pipes is not exactly expected to supercharge growth in Flint, it’s not like there is an expectation of additional tax revenue that can be dedicated to loan repayment.

#### No consensus on infrastructure solving inequality.

Sumedha Bajar 18. National Institute of Advanced Studies, School of Social Sciences, Faculty Member. "The impact of infrastructure provisioning on inequality." National Institute of Advanced Studies. Bangalore (2018).

But just like the theoretical studies, empirical literature on this topic does not provide unanimous conclusion in terms of infrastructure development leading to a reduction or increase in inequality. The study by Brakman et al (2002) found that government spending on infrastructure increased regional disparities within Europe. In a similar vein, for India, Banerjee (2004) and Banerjee and Somanathan (2007) analysed the impact of accessibility to infrastructure services on the distribution of income and showed that these two are positively related, i.e. the benefits of infrastructure services were mostly accrued in higher income groups as opposed to benefitting the poor. The study by Khandker and Koolwal (2007) found that expanding paved roads had a limited distributional impact on income in rural Bangladesh. The paper by Raychaudhari and De (2010) attempted to understand the inter-linkages among infrastructure, trade openness, and income inequality using panel data of 14 Asia-pacific countries from 1975 to 2006 and concluded trade openness and infrastructure influence income inequality but the reverse is not necessarily true. Also, the effect of infrastructure development on trade was not significant.

Another interesting aspect in this debate has been highlighted by Crescenzi et al (2017) which looks at the Government quality and the economic returns of transport infrastructure investment in European Regions. The local institutional environment in which investments are made will affect the scale and type of new infrastructure investments and, consequently, their economic returns. Poor institutions enhance the opportunities for private gain at the expense of a sound provision of public goods (Acemoglu and Dell, 2010). Their results show the influence of regional quality of government on the economic returns of transport infrastructure. In weak institutional contexts investment in motorways—the preferred option by governments—yields significantly lower returns than the secondary road. Government institutions also affect the returns of transport maintenance investment.

Recent scholarly literature has also shown that the impact of infrastructure on inequality varies for the type of infrastructure being considered. The returns of transport infrastructure investment have been more limited than those of expenditures in other development axes, such as human capital and innovation (Rodríguez-Pose and Fratesi, 2004; Crescenzi, 2005; Crescenzi and Rodríguez-Pose, 2012).

### AT: FTC Planks

#### 2. Congressional direction---all FTC action is criticized as arbitrary without it.

Washington Post 21. Editorial Board. "Don’t want the FTC to act on antitrust? Tell Congress to get moving". Washington Post. 7-11-2021. https://www.washingtonpost.com/opinions/2021/07/11/dont-want-ftc-act-antitrust-tell-congress-get-moving/

The Federal Trade Commission was frequently criticized in recent years for doing too little to rein in technology and other companies as they gallop across the economy unconcerned about any rivals they trample along the way. Now it appears that for the next few years at least, the FTC will be criticized for doing too much.

Newly minted agency chair Lina Khan has wasted no time in acting on the principle she articulated in her pre-appointment career as an academic: Modern competition law as interpreted by the courts is inadequate to address modern markets. The most controversial of the reconfigured FTC’s early moves was a 3-to-2 vote this month along party lines to rescind a 2015 policy statement limiting the commission’s ability to go after unfair conduct not in clear violation of existing antitrust legislation. The change itself is minor — but it could signal a major shift to come.

There was never a statutory limit on the FTC’s ability to pursue these types of cases. By repealing its self-constraining guidance, however, the agency is making it clear that we’re about to see a lot more of them. The idea is that the past decades’ precedent on the Sherman Antitrust Act has made it nigh impossible for enforcers to win cases without proving harm to consumers, usually through price increases — a poor fit for the free services that have come to dominate our daily lives. The surest way, then, for the FTC to strike at anticompetitive conduct by monopolistic firms is to rely on the authority Congress granted the agency at its inception to go beyond what the law lays out.

Ms. Khan and her Democratic co-commissioners have a point. These companies benefit from network effects that make their services more valuable the more people use them; users benefit, too. Trying to reduce these firms’ power by breaking them up is a dubious proposition, but trying to ensure they don’t abuse that power is essential. Gatekeeper businesses with the greatest ability to box out any competitors that do emerge, or to leverage control in one market to gain control in another, require close scrutiny. Some behavior should indeed be off-limits — from predatory pricing to some forms of self-preferencing.

The problem is, precisely what behavior the FTC considers off-limits remains unclear. This leaves businesses liable to be punished for conduct they didn’t know was punishable, and it also leaves the FTC able to institute standards that are unreasonably restrictive. President Biden, in a sweeping executive order signed on Friday intended to promote competition across the U.S. economy, directs the FTC to establish rules clarifying exactly this question. That’s good, and those rules should take care not to stifle even the biggest businesses’ legitimate right to compete. Even better than the FTC mapping out verboten conduct that federal law allows, however, would be for federal law to stop allowing it.

Bipartisan antitrust bills remain in legislative limbo in the House of Representatives. Anyone concerned that an overzealous group of unelected officials are wrongly taking matters into their hands should also want Congress to stop sitting on its own.

## EU CP

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

Eleanor M. Fox 2000. 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

## 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.

## Trade DA

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

#### 1. Ukraine sanctions

The Week 3-4. Staff op-ed. "What is the impact of economic war?". Week UK. 3-4-2022. https://www.theweek.co.uk/news/world-news/russia/955976/what-is-the-impact-of-economic-war

“Tanks are harbingers of financial chaos as well as physical destruction,” said Lex in the FT. Russia knows this well – the first Chechen war drained state coffers so badly that it “precipitated the Russian financial crisis of 1998”. This time, its actions in Ukraine have resulted in a sanctions package that is nothing short of “a declaration of economic war”. This question now is how far the ripples will spread beyond Russia, to a fragile global financial system whose government balance sheets are still debt-laden from the pandemic. No one knows how events will unwind, but war and sanctions will certainly dent economic growth and fuel already high inflation. There’s also scope for the Russian financial crisis – and the sanctions-induced trade squeeze on essential commodities – “to amplify other shocks”, particularly in vulnerable emerging markets. “The subtlest threat is of dislocations we cannot foresee: Lehman moments when panic spreads and markets freeze.” The most ominous sign so far is the collapse of the rouble, said John Stepek on MoneyWeek.com – which has made it “a great deal harder to put a price on Russian assets”. That reminds some of the run-up to the Lehman Brother’s collapse in 2008, when “suddenly no one knew what a large swathe of assets dotted about the financial system was worth”. The difference here is that exposure to Russia has been declining, so a systemic collapse looks unlikely. But “plumbing” issues are certainly a worry. “You can’t yank a country” Russia’s size “out of the global payments network without some payments getting missed and things getting messy as a result”. There has been some “self-congratulation that the exposure of Western banks to Russia is limited”, said Alex Brummer in the Daily Mail. But in a financial world where non-bank operators, such as hedge funds and private equity, are “scale players”, it’s “quite difficult to know where the risk lies”. As we learnt in 2008, it only takes the fall of one institution to set off a chain reaction. Michael Strobaek of Credit Suisse believes this is “the dawn of a new world order”, said The Observer – in which higher inflation and financial volatility are a given. The global currency system could change too, said Ben Wright in The Daily Telegraph. “Going after Russia’s central bank and shutting its lenders out of dollar clearing” may “hasten the adoption of cryptocurrencies by rogue states” – with potentially terrifying results. Outlawing Russia will also accelerate the ongoing retreat of globalisation, said Oliver Shah in The Sunday Times. “Protectionism is the order of the day.” For families, that means more inflation; for corporates, rising risks. “Frontier capitalism” has rarely looked so dangerous.

#### 2. Biden thumps---he vowed more protectionism during SOTU

David Frum 3-2. Staff writer, former speechwriter. "This Is No Time for Protectionism". Atlantic. 3-2-2022. https://www.theatlantic.com/ideas/archive/2022/03/biden-economic-nationalism-state-of-the-union/623325/

The first third of President Joe Biden’s State of the Union speech proudly repudiated his predecessor’s foreign-policy agenda. Biden denounced aggression, scorned dictators, praised democracy, and saluted allies: item by item, the opposite of Donald Trump’s approach. Then came a repeated series of promises to legislate “Buy American” into every form of government action and procurement. Trump-style nationalism—repudiated as foreign policy—was rehabilitated as domestic policy. The architects of the postwar liberal order understood that collective security and free trade buttressed each other. Trump rejected both. Biden last night endorsed one and rejected the other. “When we use taxpayers’ dollars to rebuild America, we are going to do it by buying American: Buy American products, support American jobs,” he said. When not speaking to the cameras, the president and officials in his administration typically add a caveat: “consistent with the United States’ international obligations.” This acknowledges that the North American Free Trade Agreement and other trade pacts have committed the United States to allow equal access to its own government procurement in return for access to government procurement abroad. But first under the Recovery Act of 2009, and then under the big spending bills of the Biden administration, federal dollars have often been routed through the states. And state spending has a much more uncertain relationship to the free-trade commitments signed by presidents and ratified by the Senate. Biden’s speech went further, though. He seems to intend to evade all treaty requirements, and all concern for efficient spending. There’s been a law on the books for almost a century to make sure taxpayers’ dollars support American jobs and businesses. Every administration, Democrat and Republican, says they’ll do it, but we are actually doing it. We will buy American to make sure everything from the deck of an aircraft carrier to the steel on highway guardrails is made in America from beginning to end. All of it. All of it. The reason past administrations have evaded the Buy American Act of 1933 is encoded right there in the name: 1933. Economic nationalism triggered and prolonged the Great Depression—and those Americans who had endured that trauma committed themselves to never repeat it. But memories fade, and new challenges can invite the return of old errors. In the 21st century, the free-trade idea has lost its hold on both parties: spectacularly so with the Republicans under Trump, and less noisily, but maybe more widely, with the Democrats under Biden.

## Politics DA

### At: Politics---Top Level

#### Ukraine thumps- takes up all of Biden’s attention

Jonathan Lemire, 3-1-2022, "How the Russia-Ukraine conflict has fundamentally changed Biden’s presidency," POLITICO, https://www.politico.com/news/2022/03/01/biden-white-house-russia-putin-00012696

For weeks, President Joe Biden has started and ended his day trying to get inside Vladimir Putin’s head.

The most consequential foreign policy crisis of his young term has overwhelmed the president’s schedule, shoving everything — from the State of the Union to a Supreme Court pick — to the backburner. And while he leans on a trusted inner circle of advisers to decipher Putin’s moves, he has also relied on his own experience, having practiced diplomacy with European leaders for decades and having been able to size up Putin face-to-face a number of times.

#### PC low AND fails

Evan Tarr 2/14, staff at Carolina Political Review, “Biden’s Build Back Better: Dead, Dead, Dead.,” Carolina Political Review, 2/14/2022, https://www.carolinapoliticalreview.org/editorial-content/2022/2/14/bidens-build-back-better-dead-dead-dead

West Virginia Senator Joe Manchin (D) has long been a thorn in the side of the Biden administration and the more progressive Senators of the Democratic Party. His latest pronouncement on February 1st that the Build Back Better act is “dead” is just the latest example. It is a serious blow to an administration and party that have struggled to maintain a positive image after a year of botched foreign policy, high inflation, a stubbornly persistent COVID-19 virus, and now the demise of Biden’s flagship bill. While on the surface, Manchin is the clear culprit for the bill’s failure to pass, there are deeper factors that have influenced Biden’s sluggish legislative start.

It may seem surprising that a President who received a record number of votes in the 2020 election should see his primary legislative goal so utterly stymied. Yet Democrats should be wary of assuming that 2020’s results amount to a political mandate. Much of Biden’s appeal came from being wedged between two politically polarizing extremes — on the left, the likes of Bernie Sanders and Elizabeth Warren, and on the right, Donald Trump and his ilk. Biden did not campaign as a visionary, unlike his former running mate Barack Obama. Instead, he marketed the 2020 race as a battle over “the soul of the country,” and himself as the center Democrat that would guide America with a steady and moderate hand. Yet, in the view of former Republican Governor of Louisiana and current Wall Street Journal contributor Bobby Jindal, Biden’s Build Back Better plan proposes sweeping, “Sanders-style policies.” Whether they are the right policies for this time is a separate question. But Virginia Democrat Rep. Abigail Spanberger echoed Jindal’s sentiments: “Nobody elected him to be FDR. They elected him to be normal and stop the chaos.”

The polling data for the 2020 election backs this idea up. While progressives may be eager to champion Biden’s election as signifying a broad leftward movement for the country, Biden made no significant gains over Hillary Clinton in traditionally progressive demographics. According to the PEW Research Center’s “validated voter” analysis of the 2020 election, significant gains among moderate suburbanites were responsible for Biden’s victory over Trump in comparison to Clinton’s loss in 2016. Particularly for Biden, moderates played a larger role in his victory than liberals. Because conservatives constitute a larger share of the electorate than liberals, Biden and the Democratic Party are more dependent on moderates than their Republican counterparts are. It is therefore not only naïve but also politically self-destructive to propose legislation that alienates or scorns one of the most important bases of the party.

It doesn’t help that the earlier stimulus bill passed in 2021 to the tune of $1.9 trillion dollars now seems to have contributed meaningfully to inflation. In the words of the Washington Post’s Caroline Rampell, who supported the bill originally, “Congress sent the states more money than they knew what to do with.” And among the recipients of the round of stimulus payments that came with the bill were “many high-income households that were financially unscathed by the pandemic and perhaps even improved their finances.” And while Build Back Better is projected to have little effect on inflation, the damage from the previous bill seems to have been done. Simply put, Biden’s administration and his fellow Democrats in the House and Senate tried to spend political capital they didn’t have by attempting to pass the Build Back Better bill.

Democrats, who still have hope for the bill, must now consider the political risk of reopening an intraparty battle when other pressing matters

, such as a bill to increase competition with China and another to reauthorize the 1990s Violence Against Women Act, currently take center stage. And while some progressives are pushing for a March 1st deadline — in time for Biden’s State of the Union — to resurrect the bill, Biden also has the opportunity to appoint a new Supreme Court Justice, a rare chance for a political win amidst current chaos. It will be extremely difficult for Democrats to accomplish all of the above goals while swimming against the current of low trust in the current administration’s vision for America and its capability to execute on that vision. If the Democrats in the White House and Congress wish to make progress, they will need to be considerably more politically savvy than they have been so far.

## Biz Con DA

### AT: Business Confidence

#### Businesses can afford a wage increase and know they would benefit.

Zoe Willingham 21. A research associate for Economic Policy at the Center for American Progress. “Small Businesses Get a Boost From a $15 Minimum Wage” Center for American Progress. 02-25-21. https://www.americanprogress.org/issues/economy/reports/2021/02/25/496355/small-businesses-get-boost-15-minimum-wage/

Small businesses can reap several benefits from a higher minimum wage that may offset the increased payroll costs. A survey from CNBC found that a majority of small businesses can **absorb the rise in labor costs**

**resulting from increases** in state and local minimum wages in January 2021.19 A growing number of business owners have recognized the benefits of paying a fair wage, paying living wages to their employees, and even supporting a national wage increase. Businesses represented by Business for a Fair Minimum Wage **welcomed the wage increases** that went into effect in several states at the beginning of 2021, stating in a press release, “Businesses depend on customers who make enough to buy what they are selling, from food to car repairs. Minimum wage increases will **go right back into local economies**, **helping workers and businesses** get through the pandemic and economic crisis.”20 Increased demand is good for local economies One of the reasons that large job losses do not tend to accompany increases in the minimum wage is that the increase in low-wage workers’ incomes generates increased spending in the local economy. The workers who would receive this wage increase are more likely to spend it than high-earning households—injecting local economies with a wave of consumer spending—to the benefit of local businesses.21 The Economic Policy Institute found that raising the minimum wage to $15 per hour could increase a worker’s annual salary by $5,100, which would likely go toward daily necessities.22 A study by the Federal Reserve Bank of Chicago estimates that a $1 raise for a minimum wage worker translates to an additional $2,080 in consumer spending by their household over the course of a year.23 One of the first types of spending to increase when workers get raises is dining—an effect that will provide some relief to the struggling restaurant industry.24 The increase of spending by low-income workers on household necessities and other consumer goods will help juice the economy and boost the revenue of small businesses. As David Cooper of the Economic Policy Institute aptly puts it, “The number one problem for businesses right now isn’t excessive labor costs, it’s a lack of demand.”25 Small businesses that pay living wages reap significant benefits In addition to enjoying higher consumer demand, small businesses that adopt living wages **benefit from a more productive workforce** with fewer incidental payroll costs.26 Quite simply, employees that make a fair wage are **able and willing to work harder**. When workers experience less economic anxiety, they are better able to focus on their tasks. Moreover, better pay is related to better health outcomes, meaning workers take fewer sick days. It also means that employees are more invested in their work and are less likely to be late, miss a shift, or have other disciplinary problems.27 In total, **worker productivity and the quality of service increases**, potentially allowing a firm to increase its prices to compensate for the higher pay.28 For example, a study of nursing home staff performance after a minimum wage increase showed a significant increase in the quality of care received by residents.29 In addition to higher productivity from individual workers, small **businesses benefit from lower staff turnover.**30 The time and money needed to recruit, interview, and train a new employee eats up significant resources. By some estimates, it costs about one-fifth of a worker’s annual salary to replace them, and low-wage jobs such as retail and food service are among those with the highest turnover rates.31 In the long term, raising the minimum wage will likely bring cost savings to small businesses that find it easier to retain employees after the wage increase.

# 1AR

## States CP

### Preemption---1AR

#### 2. Courts---they strike it down under the Supremacy Clause.

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

On the other hand, state antitrust laws—like all state laws—are subject to the restrictions imposed by the Supremacy Clause of the U.S. Constitution,15 and are impliedly preempted to the extent that they conflict with federal law.16 Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility,”17 or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”18 On a number of occasions, the Supreme Court has concluded that state antitrust law is preempted because it conflicts with a federal statute other than federal antitrust law.19

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

#### 3. Congress---otherwise states run with it to gain strategic advantages which creates a confusing patchwork of regulations.

Justin W. Aimonetti & Christian Talley 19. \*\*Judicial Law Clerk at U.S. Courts of Appeals with a JD from the University of Virginia School of Law, 2020. \*\*JD from the University of Virginia School of Law, 2020. “Game Changer: Why and How Congress Should Preempt State Student-Athlete Compensation Regimes.” Stanford Law Review Online, Volume 72, 28-41.

H. The Federal Solution: Proposals and Their Benefits A federal law preempting state experimentation would circumvent potential problems arising from the piecemeal state law approach.4s The principal problem of the state-by-state approach is each state's ability to gain a competitive edge over its sister-states. For instance, a state with a premier sporting university could pass even more favorable compensation laws attracting the best athletes to its collegiate teams. Thus, the first benefit of preemption is that a "federal law would set the rules for all states.'46 Nationwide legislation solves the potentially chaotic state-by-state approach as it compels all states to "play by the same set of rules,"47 preventing any one state from gaining a strategic advantage. Given that many states are ready to enact similar, albeit not identical, laws to California's Act,48 federal preemption is likely critical to ensure national uniformity. A second, crucial benefit of federal legislation is its ability to sidestep the purview of federal antitrust law. Section 1 of the Sherman Antitrust Act outlaws any "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States."49 Unlike federal law, the NCAA's rules, including the prohibition on student- athlete compensation, are not immune from antitrust scrutiny.so As one commentator has aptly put it, the NCAA's "concerted effort to destroy the free market for recruiting student-athletes is subject to scrutiny under section 1 of the Sherman Act."si In fact, the NCAA has violated antitrust law a number of times-including one high-profile case before the Supreme Court.52 And in recent years, the Ninth Circuit has grappled with student-athlete litigation in the antitrust context as well.53 Indeed, some observers believe the NCAA rules that "fix"student-athletes' compensation "at the cost of attendance ... amount to a restraint on competition in violation of the Sherman Antitrust Act."54 One commentator has even claimed that "the NCAA's principle of amateurism likely violates section 1 of the Sherman Act by artificially prohibiting student-athlete pay and by eliminating from the college sports marketplace those colleges that wish to recruit top student-athletes."ss From that perspective, "the NCAA has a choice-it can either proactively rewrite its rulebook in a manner that complies with the spirit of U.S. antitrust law, or it can wait until a court mandates such changes." 56 Yet the most sensible solution may be a third option-for Congress to pass a federal law that addresses this messy issue. Pending federal legislation promises to do just that. In March 2019, Congressman Mark Walter introduced H.R. 1804, entitled the "Student- Athlete Equity Act," a terse bill that merely allows college athletes to profit off their "name, image, or likeness."57 Even in light of the NCAA's announcement to consider a rule change, congressional sponsors of the Student Athlete-Equity Act plan to forge ahead. In the words of one sponsor, "[t]he NCAA is on the clock, and while they are, we're going to keep working towards the passage of the Student-Athlete Equity Act to make sure their words are forced into action."s8 This perceived need for immediate reform has generated rare bipartisan support. Congressman Matt Gaetz, a Florida Republican, recently tweeted, "[t]he @NCAA has devised a system where predominantly young, black adult student-athletes create value at huge cost to their bodies. Then, predominantly old, white administrators see the benefit. BS!"59 Likewise, Senator Chris Murphy, a Democrat from Connecticut, agreed that athletes should be able to commercialize their talents when he argued in a recent publication that the "current system does more to advance the financial interests of broadcasters, apparel companies, and athletic departments than it does for the student- athletes who provide the product from which everyone else profits."6o After a meeting with Senator Murphy, Senator Marco Rubio also threw his weight behind national reform. He opined that there is a need for "a standard across the country" because "50 individual state laws would make it a chaotic mess and endanger college athletics."61 Given the consensus that national reform is necessary, the remaining question is precisely which reforms are most sensible. The solutions currently proposed by legal scholars, sports analysts, and the press are legion. They include (1) allowing student-athletes to sign endorsement deals,62 (2) receiving payment for offseason play,63 (3) permitting student-athletes to "hire an agent or business manager,"64 (4) requiring that student athletes receive a "minimum salary" of "325,000 per player in each sport,"65 and (5) providing a medicine-specific fund for student-athletes "to pay for health care after their careers in college athletics are over."66 Each proposal purports to balance the two key interests at stake-equity, on the one hand, and the preservation of amateurism, on the other. But in our view, most of these proposals miss the mark. Endorsement deals naturally would concentrate remuneration to a few marquee players in football and basketball, leaving behind students competing either in less noteworthy positions or in less lucrative sports. A minimum salary would abandon the pretense of amateurism, and it is difficult to see how most athletes could generate significant funds by playing in the offseason. And funds accessible only years later would fail to satisfy student-athletes' immediate financial needs.67 For our part, we would suggest-at minimum-a two-tiered system to protect the broadest base of athletes. First, athletes would be eligible for a tax- exempt,68 means-tested cost-of-living stipend disbursed on a biweekly or monthly basis, with the aim ofensuring that no athlete is unable to pay for basic essentials.69 Such a stipend would be largely self-funding, derived from the overall revenues colleges and universities receive from their athletic programs. The more lucrative sports would subsidize the less lucrative ones, promoting a minimum social safety net for student-athletes across various sports.70 Second, athletes would be entitled to establish a trust they could access after graduating or exhausting their eligibility, in which they could deposit the proceeds from what they might earn off their name, image, or likeness.71 Though marquee players would be the primary beneficiaries of the trust system, a stipend would ensure minimum fairness, while the possibility of trusts would prevent the inequity of everyone but athletes profiting off their name, image, and likeness. And the trust system would better preserve the spirit of amateurism, preventing athletes from receiving compensation directly tied to their athletic performance as they completed their academic studies. This two-tiered system, in our view, balances amateurism and equity, ensuring student-athletes' ability to afford minimum essentials while permitting marquee players to realize the rewards of their athletic gifts. Though we are mindful that the specific content of a congressional solution will ultimately be determined by the deliberative give-and-take of the lawmaking process, one thing remains certain: For Congress's bill to create truly uniform, national standards, it must preempt competing state statutes. Our strong recommendation is that federal legislation contain an express preemption clause, clearly and "explicitly withdrawing ... from the states"72 the power to enact regulations on student-athlete compensation. Although Congress presumptively has the power to regulate such compensation under the Commerce Clause,73 the tandem concern of preemption "remains a notorious doctrinal labyrinth."74 Accordingly, Part III explains how Congress should communicate its preemptive intent.

#### 4. Empirics---Seattle Uber case proves.

Sam Harnett 21. Reporter at KQED. “How Franchising Paved the Way for the Gig Economy”. KQED. 3-18-21. https://www.kqed.org/news/11862641/how-franchising-paved-the-way-for-the-gig-economy

Starting in the 1970s, franchising set a legal precedent for gig companies by helping change the enforcement of U.S. antitrust law, and weakening the labor protections that prevent corporations from misclassifying workers as independent contractors. The link between franchising and gig work was evident in the lead-up to the election in November. When it looked like Proposition 22 — an ultimately successful bid by gig companies to circumvent California's new labor law — could fail, forcing companies to pay for basic employee protections, executives reportedly started [looking into franchising models](https://www.nytimes.com/2020/08/18/technology/uber-lyft-franchise-california.html) as a backup plan. But gig companies were already capitalizing on the business framework that decades of franchising has normalized — an ongoing tension reflected in the 7-Eleven lawsuit. Family Business There’s an old 7-Eleven on the outskirts of Fresno with a hot dog sign on the window. It says, “Anyone who is hungry and can't pay for a hot dog can have one for free!” Next to the sign is an illustration of a jolly Lebanese Santa Claus with a big beard, the name “Serge” written across his chest. That's Serge Haitayan, a man in his 60s who has run the franchise for 30 years. “Santa’s beard used to be black” he says. “Now, it’s more grayish.” A refugee from Lebanon, Haitayan came to Los Angeles in the 1980s, and then moved to Fresno — a place he thought would be good to raise a family — where he began running the 7-Eleven store and eventually became a franchise owner. “My kids were raised in the store,” he says. “I used to go pick them up every day after school, and they would stay in this office, and they would do their homework and they would spend the afternoon in the store. I used to have them open the doors for customers and say, ‘Hello. Good afternoon, good evening, welcome to the store.’ ” But Haitayan says ever since the 7-Eleven company was bought by a major Japanese retail firm 16 years ago, the store has felt increasingly less like his own. He says he can’t even control the store temperature himself. He points to the place on the wall where his old thermostat used to be, and describes how a few years ago, a crew from the company came, ripped it out and replaced it with one that is controlled remotely from U.S. corporate headquarters in Dallas. “In what world is that OK for you to live in Dallas and control my temperature here where I am sitting?” he asks. “How do you know my environment? How do you know my body? How do you know everyone else's bodies?” Increasing Control Haitayan says there has always been a struggle over control with 7-Eleven. Franchisees have to sign lengthy contracts, obligating them to comply with even lengthier operations manuals. The company's manual is nearly 1,000 pages long, he says. And 7-Eleven can change the rules in the manual at any time. When he started his franchise back in the 1990s, Haitayan says the company's control was tolerable. But ever since 7-Eleven was bought out, he says, it has increasingly dictated everything from when franchisees can order from vendors to what they can sell. The final straw for Haitayan was a two-pack of batteries. Haitayan says a few years ago he suddenly could only order jumbo packs of 14 or 16 batteries. “This is not Costco. This is not Walmart,” he says. “This is a convenience store.” His customers wanted small packs of batteries, but he says for some reason that inventory had vanished from the system. Over time, the list of products he couldn’t order continued to grow, like certain kinds of sodas, iced teas and cigarettes. 7-Eleven did not respond to multiple requests for comment for this story. The company has made other changes in recent years. It installed corporate cameras in franchise stores, raised the maximum share of profits the company can keep from 50% to 59%, and increased the focus on food sales, resulting in higher costs for franchisees because they are responsible for covering payroll and have to hire more employees to prepare the food. For Haitayan, the batteries drove home the reality of how powerless he was. “I feel like nothing but an unglorified store manager without benefits,” he says. So, he joined a handful of other California franchisees in the now more than 3-year-old misclassification lawsuit. Jaspreet Dhillon, another 7-Eleven franchisee in Southern California, and a plaintiff in the suit, echoes many of the points made by Haitayan. He says for years he didn’t fight the company's control. “You don’t have time to think,” he says. “You have family, you come home, you’re tired, you rest and the next day you’re up again ready to go again.” But a few years ago he, like Haitayan, reached his breaking point. “I used to love going to the store,” he says. “Now, I dread it.” The franchisees, who filed the suit in federal district court in Los Angeles in 2017, initially lost. But the 9th U.S. Circuit Court of Appeals vacated the lower court's ruling in 2018, determining that the judge made a hasty decision and focused too much on the amount of control detailed in the franchisee agreement, rather than the plaintiffs’ allegations of what was actually happening in their stores. The 7-Eleven decision is now back in a lower federal district court, and a new ruling is expected this month. ‘Prehistory of the Gig Economy’ Brian Callaci, an economist at Data and Society, a nonprofit that researches technology and regulation, recently released [a lengthy report](https://datasociety.net/library/puppet-entrepreneurship/) on the current level of corporate control in franchising. “It would be a stretch to call it real independent business ownership," says Callaci, who reviewed more than 500 franchise contracts. Although he says 7-Eleven is one of the more overbearing franchises, franchisors in general have moved towards more centralized control. It's not a coincidence that this increase parallels the heightened control in the gig economy, Callaci says, adding that franchising helped lay the legal groundwork for gig companies like Lyft and DoorDash. “The legal history of franchising is very much the prehistory of the gig economy,” he says. Before the 1970s, regulators were more likely to use antitrust law to try and stop larger corporations from tightly controlling smaller independent businesses, Callaci says. The prospect of corporate domination, he adds, was a bigger factor in assessing and enforcing antitrust violations. But through a series of subsequent court cases, franchisors gained the ability to exert greater control over franchisees. In 1977, they scored a major victory in Continental TV v. GTE Sylvania, in which the U.S. [Supreme Court ruled](https://www.oyez.org/cases/1976/76-15) that large corporations controlling smaller operators, like franchisees, was intrinsic to the American business model. That ruling and others like it changed how antitrust laws were enforced in the U.S. The principles of shareholder capitalism became the guiding ideology, with the focus shifting from trying to prevent the domination of smaller independent businesses and workers to strengthening "consumer welfare" and "economic efficiency." Squeezed Out Today, there are some 770,000 franchisees in America. Many are immigrants or people of color who had to scrape together money from friends and family to pay the franchise fee required to enter the business. For prime 7-Eleven locations in California, that can amount to hundreds of thousands of dollars. Dhillon says 7-Eleven promises true business ownership, the American dream. “They paint a rosy picture, but then when you get in you find it’s a different reality.” Once franchisees get into the business, it’s hard to get out. For one, most franchisees do not own their property. That means if they lose the right to the franchise, they lose their business and their investment, which could mean sacrificing the entire franchise fee. Haitayan says the power 7-Eleven has over franchisees keeps many of them from speaking up. He hasn’t kept quiet, though. Haitayan has been involved in several lawsuits against 7-Eleven in recent years, including one over the installation of cameras in stores, which franchisees eventually accepted in a settlement. Last fall, on Haitayan’s 30th anniversary owning his franchise, he says the company sent him a letter informing him they weren’t renewing the lease and were closing the store. Haitayan says the store was doing well and he could see no financial reason for to close it down. “Beside saying, ‘We want to teach every franchisee a lesson, that the moment you stand up to 7-Eleven and you create problems and you challenge them and you take them to court, this is what is going to end up happening to you,’ ” he says. But Haitayan is relatively lucky. Unlike most other 7-Eleven franchisees, he owns his property, which means he was able to reopen it as his own store under a different name. But he says because 7-Eleven neglected to do maintenance for years, he had to spend over a quarter million dollars on renovations. Even though he's opening his own store, he plans to remain involved in the current lawsuit. “My fight is still with franchisees and with all the new economy gig employees,” he says, “because they’re not treated fair.” Haitayan says franchisees and gig workers are in a similar boat because they’re both fighting against companies that he says are taking excessive control over workers without having to provide basic benefits. He says American workers should either be granted employee protections or true independence. From Franchising to Gig Platforms Today's franchisors and gig companies have both benefited heartily from the decreasing focus on corporate domination in antitrust enforcement. With the development of apps, gig companies have gone a step further than the franchise model. Instead of requiring franchisees to buy into the brand to run their own business, gig workers sign up on their platforms to do piecemeal gigs. This "platform argument" has been key to how many gig companies justify their employment practices to regulators. Gig company executives and their legal teams consistently argue they are not running taxi or delivery businesses, but instead tech companies that have created platforms to connect consumers to independent service providers. Under this platform argument, Uber drivers, Instacart grocery shoppers or DoorDash deliverers are not employees, but rather entrepreneurs running their own businesses. This argument has been very successful, largely because of the way the U.S. now enforces antitrust law, says University of Utah economist Marshall Steinbaum. “The business model of gig companies is dependent on the weakening of antitrust,” says Steinbaum, who [published a paper](https://marshallsteinbaum.org/assets/steinbaum-2019-antitrust-the-gig-economy-and-labor-market-power-law-and-contemporary-problems-.pdf) on the issue. If regulators enforced antitrust law the way they used to, Steinbaum says, gig companies would risk being sued for how much they control their supposedly independent contractors. They would be encouraged to classify their workers as employees so that they could continue setting prices and controlling the interaction between independent workers and customers, things that could have triggered antitrust enforcement in the past. While changes in antitrust enforcement have made it easier for large companies to dictate prices and exert greater control over supposedly independent businesses, they have also become a tool to prevent workers from organizing or forming their own collectives. If a bunch of taxi drivers got together, made an app and called themselves independent businesses, but collectively set prices, consumers could easily sue them for price fixing, says Steinbaum, [pointing to numerous examples](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3279629) of crackdowns on employee coordination. The reorientation of antitrust enforcement has also helped prevent gig workers from organizing and pushing for higher wages. In 2015, the Seattle City Council passed a measure extending collective bargaining rights to Lyft and Uber drivers. Right after its passage, Lyft, Uber and the city's chamber of commerce sued, claiming the measure violated federal antitrust law — on the grounds that workers would potentially be able to spur price hikes. After the federal government weighed in, supporting the suit, [the council pulled the collective bargaining provision.](https://www.geekwire.com/2020/uber-seattle-u-s-chamber-end-legal-dispute-union-law-city-plans-minimum-wage-drivers/) Reforming antitrust would require regulators to be honest that “economic efficiency” is not some neutral, objective metric, but an ideological construct, argues Sanjukta Paul, a Wayne State law professor who wrote [a study that touched on how gig companies](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4919&context=lcp) have exerted control over "independent contractors" without using the franchise model. “When you’re telling someone else what to do and dominating them economically and extracting as much as you can from them, effort-wise, whether it’s a worker or small firm, that is ‘efficiency,' ” she says. Paul envisions an alternative metric based on social good. “If we can be more systematic and honest about what values we want to promote,” she says, “then we might say it is actually efficient and pro-social to have truck drivers and taxi cab drivers make a living wage so that they can invest in their communities and then invest in green technology for their trucks and cars.” Paul's pitch — that antitrust law be again used to better protect workers instead of focusing on lowering costs for consumers and making profit for shareholders — could go a long way in helping both gig workers who want employee protections and franchisees like Haitayan who want true independence.

### FTC Circumvents---1AR

#### 2] FTC intervenes and helps corporations overcome the CO.

American Economic Liberties Project 21. “THE COURAGE TO LEARN: A RETROSPECTIVE ON ANTITRUST AND COMPETITION POLICY DURING THE OBAMA ADMINISTRATION AND FRAMEWORK FOR A NEW, STRUCTURALIST APPROACH”. American Economic Liberties Project. January 2021. https://www.economicliberties.us/wp-content/uploads/2021/01/Courage-to-Learn-Final.pdf

UNDERMINING STATE AND LOCAL EFFORTS TO PROMOTE COLLECTIVE BARGAINING One path to strengthen labor rights is for cities and states to establish market standards that promote safety and raise wages. Such a public role for cities and states was especially important in the early 2010s, as Uber, Lyft, and other “gig economy” companies sought to undermine public rules using aggressive tactics to acquire market power and underpay drivers. The FTC, led by Republican FTC Commissioner Maureen Ohlhausen with support from her Democratic colleagues and staff, sought to aid these corporations in their efforts to avoid city and state rules under the rhetoric of preventing excessive regulation. In a 2016 speech, Ohlhausen praised Uber and Lyft, which she lauded as part of the “sharing economy,” and expressed hostility to state action to regulate them.268 Ohlhausen highlighted the FTC’s advocacy work to aid Uber and Lyft, citing letters to the Anchorage, Colorado, Chicago, and D.C. governments in 2013 and 2014.269 In testimony before the House that same year, FTC official Andrew Gavil lamented state rules that “likely impede competition,” while acknowledging that such rules “can protect consumers from actual health and safety risks and support other valuable public policy goals.”270 What happened after the Obama administration perhaps illustrates the bipartisan continuity of this hostility to goals other than consumer prices. Ohlhausen, then FTC acting chairwoman under the Trump administration, and Commissioner Terrell McSweeny, an Obama-appointed Democrat, joined the Trump Justice Department in filing a legal brief explicitly backing the U.S. Chamber of Commerce in opposing a Seattle law

that empowered Uber and Lyft drivers to bargain collectively for higher wages. McSweeny’s position is especially notable, since hers was the deciding vote on an FTC that had only two commissioners at the time.271 Another way in which the Obama administration prevented workers from organizing for better wages and working conditions was through its opposition to occupational licensing, which is the crafting of requirements that workers achieve a certain level of education or sector-specific training before entering a profession. Much like barriers in other professional industries, these requirements support higher incomes for their members. As the FTC filed a series of complaints against worker organizing and occupational licensing rules in 2015, Obama Council of Economic Advisers Chairman Jason Furman gave a speech warning about licensing’s ostensible dangers.272 The White House also issued a report studying licensing. Announcing the report’s release, National Economic Council Director Jeffrey Zients and Council of Economic Advisers member Betsey Stevenson cautioned that higher wages for workers might raise prices for consumers.273 Occupational licensing rules are important tools for local communities to ensure a living wage to workers, high-quality services to consumers, and a decent overall community to their citizens. By excluding easy entry into some work, occupational licensing rules might increase consumer prices, but low consumer prices are not the sole goal of policy. There are health and safety mandates, or even mandates against indentured servitude, all of which might increase consumer prices—but policymakers do not argue for OSHA deregulation or reimplementation of forced labor. Indeed, occupational licensing requirements also help ensure that consumers benefit from new workers committing to the field. Those workers should arguably also be encouraged to invest in skills, or what economists call “human capital.”274 Licensing also provides other benefits. One study noted that it can help mitigate racial and gender wage gaps.275 Another finds evidence that licensure can facilitate more egalitarian entry into jobs.276 Another study found that—contrary to frequently asserted speculation that licensing can restrict entry into occupations—licensing can “ease access into occupations for immigrants, particularly for vulnerable immigrant labor groups.”277 As unionization rates decline, occupational licensing serves as a counterbalance to provide workers with economic stability.278 And ultimately, local communities should be able to shape their local economies by crafting rules that aim to create baseline conditions for workers. Myriad other changes in law and policy also contributed to weakened worker power and wage stagnation. But the ultimate consequence of the FTC’s initiatives was to weaken collective worker action and legitimize the rise of more exploitative business models.

## Biz Con DA

#### 2] Monopsony results in economic losses.

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

#### 3] Inequality inevitably collapses the economy---only major policy changes solve.

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Collapses of even advanced civilizations have occurred many times in the past five thousand years, and they were frequently followed by centuries of population and cultural decline and economic regression. Although many different causes have been offered to explain individual collapses, it is still necessary to develop a more general explanation. In this paper we attempt to build a simple mathematical model to explore the essential dynamics of interaction between population and natural resources. It allows for the two features that seem to appear across societies that have collapsed: the stretching of resources due to strain placed on the ecological carrying capacity, and the division of society into Elites (rich) and Commoners (poor).

The Human And Nature DYnamical model (HANDY) was inspired by the predator and prey model, with the human population acting as the predator and nature being the prey. When small, Nature grows exponentially with a regeneration coefficient γ, but it saturates at a maximum value λ. As a result, the maximum regeneration of nature takes place at λ / 2, not at the saturation level λ. The Commoners produce wealth at a per capita depletion rate δ, and the depletion is also proportional to the amount of nature available. This production is saved as accumulated wealth, which is used by the Elites to pay the Commoners a subsistence salary, s, and pay themselves κs, where κ is the inequality coefficient. The populations of Elites and Commoners grow with a birth rate β and die with a death rate α which remains at a healthy low level when there is enough accumulated food (wealth). However, when the population increases and the wealth declines, the death rate increases up to a famine level, leading to population decline.

We show how the carrying capacity – the population that can be indefinitely supported by a given environment (Catton, 1980) – can be defined within HANDY, as the population whose total consumption is at a level that equals what nature can regenerate. Since the regrowth of Nature is maximum when y = λ / 2, we can find the optimal level of depletion (production) per capita, δ\* in an egalitarian society where xE ≡ 0, δ∗∗(≥ δ∗) in an equitable society where κ ≡ 1, and δ\*\*\* in an unequal society where xE ≥ 0 and κ > 1.

In sum, the results of our experiments, discussed in Section 6, indicate that either one of the two features apparent in historical societal collapses – over-exploitation of natural resources and strong economic stratification – can independently result in a complete collapse. Given economic stratification, collapse is very difficult to avoid and requires major policy changes, including major reductions in inequality and population growth rates. Even in the absence of economic stratification, collapse can still occur if depletion per capita is too high. However, collapse can be avoided and population can reach equilibrium if the per capita rate of depletion of nature is reduced to a sustainable level, and if resources are distributed in a reasonably equitable fashion.

## Politics

#### Won’t pass- snags slowing talks

Tony Romm, 3-3-2020, "Biden administration requests $32.5 billion in Ukraine aid and coronavirus funds as spending talks continue," Washington Post, https://www.washingtonpost.com/us-policy/2022/03/03/ukraine-covid-aid-white-house-request/

The fate of the two spending requests rests in the hands of Congress, where lawmakers have raced in recent days to cobble together a widely sought — and repeatedly delayed — long-term deal to fund the government. Talks have progressed, but disagreements remain, including over the size and scope of the emergency aid that might be attached to the deal, known in congressional parlance as an omnibus.

On Tuesday, Senate Minority Leader Mitch McConnell (R-Ky.) announced a “snag” in talks over Ukraine assistance, attacking Democrats for trying to source the money

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from sums they already planned to apportion for the Pentagon. A day later, dozens of Republicans questioned whether additional coronavirus aid is necessary, arguing that the Biden administration has not fully accounted for existing spending, including the $1.9 trillion package adopted last year.

The Biden administration sought to assuage those concerns in the request it is transmitting to Congress. The Ukraine money would be new, emergency aid, not repurposed dollars meant for the Defense Department. And the funds set aside for the coronavirus reflect immediate needs, particularly because some existing programs to help uninsured Americans obtain tests and vaccinations are set to expire this spring, according to one of the people familiar with the administration’s thinking.

But it remained unclear whether it would be enough to satisfy Republicans, particularly those who still question whether more pandemic-related spending is necessary at a time when infections are waning. In both cases, though, senior administration officials said the fast-evolving nature of both crises could force them to seek additional funds in the weeks ahead.