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### Plan

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

### Adv---Inequality

#### Advantage 1 is Inequality---

#### Labor monopsony causes rising income inequality---correcting antitrust doctrine solves

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In recent years, a declining economic growth rate and rising income inequality have taken center stage in public debate. Academic research has identified several possible causes, ranging from major structural shifts in the economy to public policy failure. One cause that has received increasing attention from economists is labor market power — the ability of employers to set wages below workers’ marginal revenue product.1 New evidence suggests that many labor markets around the country arenot competitive but instead exhibit considerable market power enjoyed by employers, who use their market power to suppress wages.2 Wage suppression enhances income inequality because it creates a wedge between the incomes of people who work in concentrated labor markets and the incomes of people in competitive ones, and often affects low-income earners the most as they have the fewest options and least bargaining power. More important, though, it reduces the incomes of workers relative to those of people who live off capital, and the latter are almost uniformly higher earners than the former. Wage suppression also interferes with economic growth since it results inunderemployment of labor. Furthermore, while it may seem to raise the return on capital, wage suppression actually depresses it, as capital must lie idle to take advantage of monopsony power. With wages artificially suppressed, qualified workers decline to take jobs, and workers may underinvest in skills and schooling. Many workers exit the workforce and rely on government benefits, including disability benefits, which have become a hidden welfare system.3 This in turn costs the government both in lost taxes and in greater expenditures. We estimate monopsony power in the U.S. economy reduces overall output and employment by 13%, and labor’s share of national output by22%.4 Labor market power is the mirror image of product market power. A “product market” is a collection of products defined by frequent consumer substitution. When a small number of sellers or only one seller of these products exist, we say that each seller has (product) “market power,” which enables it to charge a price higher than marginal cost, or the price that would prevail in a competitive market. When a small number of employers hire from a pool of workers of a certain skill level within the geographic area in which workers commute, the employers have labor market power. One major source of market power in both types of markets is thus “concentration,” where only a few firms operate in a given market. Imagine, for example, a small town with only a few gas stations. Each gas station sets the price of gas to compete with the prices of other gas sta- tions. When a gas station lowers its price, it may obtain greater market share from other gas stations, but it also receives less revenue per sale. If only a single gas station exists, it will maximize profits by charging a high (“monopoly”) price because the gains from buyers willing to pay the price exceed the lost revenue from buyers who stay away. If only a few gas stations exist, they might illegally enter a cartel in which they charge an above-market price and divide the profits, or they might in- formally coordinate, which is generally not illegal5 — though the social harm is the same. In contrast, if many gas stations compete, prices will be bargained down to the efficient level — the marginal cost — resulting in lower prices for consumers and higher aggregate output of gasoline. Labor market concentration creates monopsony (or, if more than one employer, oligopsony, but we use these terms interchangeably) conditions where labor market power is exercised by the buyer rather than the seller (as in the example of gasoline stations). Employers are buyers of labor who operate within a labor market. A labor market is a group of jobs, between which workers can switch with relative ease (for exam- ple, computer programmers, lawyers, or unskilled workers), located within a geographic area usually defined by the commuting distance of workers. A labor market is concentrated if only one or a few employers hire from this pool of workers. For example, imagine the gas stations employ specialist maintenance workers who monitor the gas pumping equipment. If only a few gas stations exist in that area, and no other firms (for example, oil refineries) hire from this pool of workers, then the labor market is concentrated, and the employers have market power in the labor market. To minimize labor costs, the employers will hold wages down below what the workers would be paid in a competitive labor market — their marginal revenue product. Thus, some people qualified to work will refuse to do so, but the employers gain more from wage savings than they lose from having a more limited pool of workers from which to hire. Curiously, while existing antitrust practice would readily consider the effects of a gas station merger on the price of gas, it would ignore the effects of the merger on the wages of specialist maintenance workers.6 In this paper, we outline how antitrust doctrine and regulatory analysis can be modified to account for labor market power. We argue there is no economic or legal basis for the omission of labor market considerations from antitrust scrutiny, and we provide labor market analogues of the existing standards used by regulators to scrutinize product market mergers. Besides procedures for labor market definition and measures of employer concentration, as in the Herfindahl-Hirschman Index (HHI), we show how a slight modification of a commonly used measure of “Upward Pricing Pressure” yields a measure of “Downward Wage Pressure” that can be used to provide an alternative diagnostic for labor market power. We provide a case study of how these ideas could be applied to a hypothetical hospital merger using existing estimates of employer market power in the nursing labor market. We also discuss the role that merger simulation with structural econometric models can play in evaluating labor market effects of mergers. Finally, we show how other anticompetitive practices, such as vertical foreclosure, resale price maintenance, and predatory pricing, have labor market parallels that may warrant regulatory scrutiny from antitrust authorities.

#### Labor market power collapses the economy---inequality and wage stagnation.

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

In the United States, and much of the Western world, economic growth has slowed, inequality has risen, and wages have stagnated. Academic research has identified several possible causes, ranging from structural shifts in the economy to public policy failure. One possible cause that has received increasing attention from economists is labor market power, the ability of employers to set wages below workers’ marginal revenue product.1 New evidence suggests that many labor markets around the country are not competitive but instead exhibit considerable market power enjoyed by employers, who use their market power to suppress wages. This phenomenon—the power of employers to suppress wages below the competitive rate—is known among economists as labor monopsony, or simply labor market power. Wage suppression enhances income inequality because it creates a wedge between the incomes of people who work in concentrated and competitive labor markets. Wage suppression also reduces the incomes of workers relative to those of people who live off capital, and the latter are almost uniformly wealthier than the former. Wage suppression also interferes with economic growth since it results in underemployment of labor and, while it may seem to raise the return on capital, actually depresses it, as capital must lie idle to take advantage of monopsony power. With wages artificially suppressed, qualified workers decline to take jobs, and workers may underinvest in skills and schooling. Many workers exit the workforce and rely on government benefits, including disability benefits that have become a hidden welfare system.2 This in turn costs the government both in lost taxes and in greater expenditures. One estimate finds that monopsony power in the U.S. economy reduces overall output and employment by 13% and labor’s share of national output by 22%.3

The claim that labor market power raises inequality and reduces growth mirrors another claim that has received attention lately—that the product market power of firms has contributed to rising inequality and faltering growth.4 A product market is a collection of products defined by frequent consumer substitution. When a small number of sellers or one seller of these products exist, we say that each seller has product market power, which enables it to charge a price higher than marginal cost, or the price that would prevail in a competitive market. When a small number of employers hire from a pool of workers of a certain skill level within the geographic area in which workers commute, the employers have labor market power.

One major source of market power in both types of markets is thus concentration, where only a few firms operate in a given market. Imagine, for example, a small town with only a few gas stations. Each gas station sets the price of gas to compete with the prices of the other gas stations. When a gas station lowers its price, it may obtain greater market share from the other gas stations—which increases profits—but it also receives less revenue per sale. If only a single gas station exists, it will maximize profits by charging a high (“monopoly”) price because the gains from buyers willing to pay the price exceed the lost revenue from buyers who stay away. If only a few gas stations exist, they might illegally enter a cartel in which they charge an above-market price and divide the profits, or they might informally coordinate, which is generally not illegal, though the social harm is the same. In contrast, if many gas stations compete, prices will be bargained down to the efficient level—the marginal cost—resulting in low prices for consumers and high aggregate output of gasoline.

Labor market concentration creates monopsony (or, if more than one employer, oligopsony, but I use these terms interchangeably) where labor market power is exercised by the buyer rather than (as in the example of gas stations) the seller. Employers are buyers of labor who operate within a labor market. A labor market is a group of jobs (e.g., computer programmers, lawyers, or unskilled workers) within a geographic area where the holders of those jobs could with relative ease switch among the jobs. The geographic area is usually defined by the commuting distance of workers. A labor market is concentrated if only one or a few employers hire from this pool of workers. For example, imagine the gas stations employ specialist maintenance workers who monitor the gas-pumping equipment. If only a few gas stations exist in that area, and no other firms (e.g., oil refineries) hire from this pool of workers, then the labor market is concentrated, and the employers have market power in the labor market. To minimize labor costs, the employers will hold wages down below what the workers would be paid in a competitive labor market—their marginal revenue product. Faced with these low wages, some people qualified to work will refuse to. But the employers gain more from wage savings than they lose in lost output because of the small workforce they employ.

Antitrust law does not distinguish monopoly and monopsony (including labor monopsony): firms that achieve monopolies or monopsonies through anticompetitive behavior violate antitrust law. But product market concentration has received a huge amount of attention by courts, researchers, and regulators, while labor market concentration has received hardly any attention at all.5 The Department of Justice (DOJ) and Federal Trade Commission’s (FTC) Horizontal Merger Guidelines, which are used to screen potential mergers for antitrust violations, provide an elaborate analytic framework for evaluating the product market effects of mergers. Yet, while the Merger Guidelines state that there is no distinction between seller and buyer power,6 they say nothing about the possible adverse labor market effects of mergers. Similarly, while there are thousands of reported cases involving allegations that firms have illegally cartelized product markets, there are few cases involving allegations of illegally cartelized labor markets.7

This historic imbalance between what I will call product market antitrust and labor market antitrust has no basis in economic theory. From an economic standpoint, the dangers to public welfare posed by product market power and labor market power are the same. As Adam Smith recognized, businesses gain in the same way by exploiting product market power and labor market power—enabling them to increase profits by raising prices (in the first case) or by lowering costs (in the second case).8 For that reason, businesses have the same incentive to obtain product market power and labor market power. Hence the need—in both cases—for an antitrust regime to prevent businesses from obtaining product and labor market power except when there are offsetting social gains.

#### Current antitrust law explains the decline in wages and rise in inequality.

Sandeep Vaheesan 18. Legal director at the Open Markets Institute. “How Contemporary Antitrust Robs Workers of Power” LPE Project. 07-19-18. <https://lpeproject.org/blog/how-contemporary-antitrust-robs-workers-of-power/>

The political economist Albert Hirschman developed the idea that members of an organization can exercise power in two ways—through exit and voice. Market activity is associated with exit: consumers unhappy with the price or quality of service of their current wireless carrier can switch to a rival carrier offering lower rates or better service. Elections exemplify voice: voters can replace a corrupt or ineffective incumbent officeholder with a challenger promising to make the government work for ordinary people. For workers, both exit (joining a new employer) and voice (making demands of a current employer) are important. Despite the pro-worker aims of the framers of the Sherman and Clayton Acts, antitrust law today is an enemy of both exit and voice for workers. For more than a generation, antitrust enforcers have permitted labor markets to become highly concentrated and have also interfered with the efforts of a large segment of workers to build collective power. Through their labor market actions, the Department of Justice (DOJ) and Federal Trade Commission (FTC) reinforce, rather than tame, corporate power. To create a progressive, pro-worker antitrust, legislators and policymakers must adopt a radically different vision for the field. Tens of millions of American workers wield little or no power in their place of work. In many parts of the country, workers lack meaningful exit. They face concentrated local labor markets in which only a handful of employers compete (at least theoretically) for their services. In some labor markets, employees have only one actual or prospective employer. In other words, many Americans, at least in their capacity as workers, may experience what we often think of as a relic of a bygone era—the company town. As recent studies have shown, employer-side concentration is associated with significantly lower wages. And other research has found that concentration at one level of a supply chain can depress wages further upstream. In addition to concentrated markets, approximately 30 million workers are subject to non-compete clauses, which prevent them from accepting a new job or starting a business in the same line of work. Non-compete clauses, regardless of whether they are enforced, can signal to workers that their choice is either stay at their current job or suffer extended unemployment. Along with possessing few exit options, most workers cannot assert effective voice in the workplace. Big business’s legal and political war on labor’s power has severely weakened unions. In contrast to the 1950s when roughly a third of wage and salary workers were unionized, only a small percentage of workers are members of labor unions today—around one in ten among all workers, and one in sixteen among workers in the private sector. This decline in union density explains a significant fraction of the forty-year stagnation in wages and increase in income inequality. Moreover, even if wage gains had kept pace with productivity, the collapse of organized labor means that workers lost say over numerous workplace issues. While employees can speak up as individuals, this type of voice is no substitute for the collective voice that comes from a democratic union. Given that most individual workers are dispensable and replaceable for their employers, a lone voicing of grievance often can easily be ignored or even invite retaliation from an employer. And, beyond the site of employment, unorganized workers are less able to exercise voice in electoral politics and check the dominant influence of corporations. Antitrust enforcers have allowed labor markets to grow more concentrated across the country. Just as labor law has been rewritten to cripple labor organizing, the executive branch and courts have remade antitrust to be much friendlier to capital over the past four decades. Influenced by the writings of Robert Bork, the Supreme Court has held that the antitrust laws are a “consumer welfare prescription.” Although the Supreme Court and the antitrust agencies counterintuitively state that consumer welfare accounts for harms to workers and other sellers of services, the DOJ and the FTC focus their enforcement on mergers and practices harmful to consumers. In developing enforcement priorities, the federal antitrust agencies have relied on simplistic economic theory. Instead of directing their economists to study the structure of labor markets, the DOJ and the FTC have adopted an Econ 101 view of the world and assumed that labor markets are generally competitive on the employer side. Embracing this fiction, the agencies have never stopped a merger on labor market grounds. Due to antitrust inaction (and other factors), labor market concentration has increased since the late 1970s.

#### Inequality undermines US international engagements---it’s the biggest threat.

Kurt M.Campbell 14**.** Chairman and chief executive of the Asia Group investment and consulting firm was assistant secretary of state for East Asian and Pacific Affairs from 2009 to 2013. “How income inequality undermines U.S. power” The Washington Post. https://www.washingtonpost.com/opinions/how-income-inequality-undermines-us-power/2014/11/28/53fab4e4-74e5-11e4-9d9b-86d397daad27\_story.html?utm\_term=.40bd11b21cf7

Much has been written about the domestic consequences of growing income inequality in the United States — how inequality depresses growth, puts downward pressure on the middle class, accentuates wage stagnation and creates added difficulty paying for a college education and buying a home — but much less has been said about how inequality will affect America’s role in the world. How will the social science experiment of allowing wealth to settle so unequally between the top 1 percent and rest of the United States impact the foundations and contours of U.S. foreign policy? In fact, there are likely to be subtle and direct consequences of growing inequality both for the United States’ international standing and its activism. In most critical respects, the United States has helped to create and underwrite the global operating system since the end of World War II. This required a citizen’s sense of external responsibility and belief that the United States had something unique and valuable to confer to the world. Americans over these generations have regularly demonstrated in word and deed that they were prepared to bear burdens and advance ideas. Coinciding with this era was a general sense of overarching optimism that reinforced a post-World War II period of unprecedented American activism on the global scene. It is likely that as a growing segment of the population strains just to get by, it will increasingly view foreign policy — foreign assistance and military spending alike — as a kind of luxury ripe for cuts and a reduction in ambition. It is possible to see early indicators of these sentiments on the right and left, in the form of both tea party isolationism and Occupy Wall Street suspicion that corporate interests drive America’s foreign entanglements. It is also the case that other countries have long emulated aspects of the American Way in designing their own development models. Having access to higher education, creating conditions that support innovation and allowing for greater upward mobility have all been deeply attractive qualities to many nations. But it is the construction of a durable U.S. middle class that has been perhaps most compelling to highly stratified societies across Latin America, Asia and Africa. Now, however, the United States is moving in the other direction, toward an unstable society divided between astronomically rich elites and everyone else. This undermines a critical component of U.S. soft power and is a model for societal engineering that few would choose to emulate. It is also the case that the most recent era of U.S. exertion on the global stage has involved nearly 15 years of conflict in the Middle East and South Asia. The most important features of these largely military engagements have involved refinements in counterinsurgency technique and adaptations in military technology. A different 1 percent of the U.S. population has been primarily involved in this struggle: the U.S. military and others associated with the defense establishment. Aside from clapping when a uniformed military member greets an emotional family at an airport homecoming, the vast majority of the population has been largely unaffected by these conflicts. They neither paid for nor fought these wars. The next phase of intense global engagement is likely to demand much more from a larger share of the population. The lion’s share of 21st-century history will play out in Asia, with its thriving and acquisitive middle classes driving innovation, nationalist competitions, military ambitions, struggles over history and identity, and simple pursuit of power. The United States is in the midst of a major reorientation of its foreign policy and commercial priorities that will draw it more closely to Asia in the decades ahead. The competition for power and prestige there rests on comprehensive aspects of national power — as much to our product and service offerings, the strength of our educational system and the health and vitality of our national infrastructure as to the quality of U.S. military capabilities. Each of these efforts require substantial and sustained longer-term investments; all face funding shortfalls due to myriad challenges. A corresponding consequence of growing inequality has been a reduction in support for these building blocks for comprehensive and sustained international engagement. The worrisome dimensions of income inequality on the quality of domestic American life should be enough to cause us to consider enacting remedies. However, the potential negative implications on U.S. performance internationally can only add to the case. Ultimately, a sustained and purposeful American internationalism is inextricably linked to the health of our domestic life, to which gaping inequality is the biggest threat.

#### Collapsing worker welfare causes neo-isolationist nativism---recovery future-proofs internationalism.

Charles A. Kupchan and Peter L. Trubowitz May/June 21. Charles A. Kupchan is a Senior Fellow at the Council on Foreign Relations, Professor of International Affairs in the School of Foreign Service and the Government Department at Georgetown University. Peter L. Trubowitz is Professor of International Relations at the London School of Economics and Political Science and an Associate Fellow at Chatham House. “The Home Front: Why an Internationalist Foreign Policy Needs a Stronger Domestic Foundation”. https://www.foreignaffairs.com/articles/united-states/2021-04-20/foreign-policy-home-front

U.S. President Joe Biden has declared that under his leadership, “America is back” and once again “ready to lead the world.” Biden wants to return the country to its traditional role of catalyzing international cooperation and staunchly defending liberal values abroad. His challenge, however, is primarily one of politics, not policy. Despite Biden’s victory in last year’s presidential election, his internationalist vision faces a deeply skeptical American public. The political foundations of U.S. internationalism have collapsed. The domestic consensus that long supported U.S. engagement abroad has come apart in the face of mounting partisan discord and a deepening rift between urban and rural Americans. An inward turn has accompanied these growing divides. President Donald Trump’s unilateralism, neo-isolationism, protectionism, and nativism were anathema to most of the U.S. foreign policy establishment. But Trump’s approach to statecraft tapped into public misgivings about American overreach, contributing to his victory in 2016 and helping him win the backing of 74 million voters in 2020. An “America first” approach to the world sells well when many Americans experience economic insecurity and feel that they have been on the losing end of globalization. A recent survey by the Pew Research Center revealed that roughly half the U.S. public believes that the country should pay less attention to problems overseas and concentrate more on fixing problems at home. Redressing the hardships facing many working Americans is essential to inoculating the country against “America first” and Trump’s illiberal politics of grievance. That task begins with economic renewal. Restoring popular support for the country’s internationalist calling will entail sustained investment in pandemic recovery, health care, infrastructure, green technology and jobs, and other domestic programs. Those steps will require structural political reforms to ease gridlock and ensure that U.S. foreign policy serves the interests of working Americans. What Biden needs is an “inside out” approach that will link imperatives at home to objectives abroad. Much will depend on his willingness and ability to take bold action to rebuild broad popular support for internationalism from the ground up. Success would significantly reduce the chances that the president who follows Biden, even if he or she is a Republican, would return to Trump’s self-defeating foreign policy. Such future-proofing is critical to restoring international confidence in the United States. In light of the dysfunction and polarization plaguing U.S. politics, leaders and people around the world are justifiably questioning whether Biden represents a new normal or just a fleeting reprieve from “America first.”

#### Soft power and international coop solve extinction

Joseph S. Nye Jr. 20. Harvard University Distinguished Service Professor, Emeritus. "COVID-19’s Painful Lesson About Strategy and Power". War on the Rocks. 3-26-2020. https://warontherocks.com/2020/03/covid-19s-painful-lesson-about-strategy-and-power/

In 2017, President Donald Trump announced a new National Security Strategy that focused on great-power competition with China and Russia. While the plans also note the role of alliances and cooperation, the implementation has not. Today, COVID-19 shows that the strategy is inadequate. Competition and an “America First” approach is not enough to protect the United States. Close cooperation with both allies and adversaries is also essential for American security.

Under the influence of the information revolution and globalization, world politics is changing dramatically. Even if the United States prevails in the traditional great-power competition, it cannot protect its security acting alone. COVID-19 is not the only example. Global financial stability is vital to U.S. prosperity, but Americans need the cooperation of others to ensure it. And while trade wars have set back economic globalization, there is no stopping the environmental globalization represented by pandemics and climate change. In a world where borders are becoming more porous to everything from drugs to infectious diseases to cyber terrorism, the United States must use its soft power of attraction to develop networks and institutions that address these new threats. For example, this administration proposed halving the U.S. contribution to the World Health Organization’s budget — now we need it more than ever.

A successful national security strategy should start with the fact that “America First” means America has to lead efforts at cooperation. A classic problem with public goods (like clean air, which all can share and from which none can be excluded) is that if the largest consumer does not take the lead, others will free-ride and the public goods will not be produced. As the technology expert Richard Danzig summarizes the problem:

Twenty-first century technologies are global not just in their distribution, but also in their consequences. Pathogens, AI systems, computer viruses, and radiation that others may accidentally release could become as much our problem as theirs. Agreed reporting systems, shared controls, common contingency plans, norms and treaties must be pursued as a means of moderating our numerous mutual risks.

Tariffs and border walls cannot solve these problems. While American leadership is essential because of the country’s global influence, success will require the cooperation of others.

On transnational issues like COVID-19 and climate change, power becomes a positive-sum game. It is not enough to think of American power over others. We must also think in terms of power to accomplish joint goals, which involves power with others. On many transnational issues, empowering others helps us to accomplish our own goals. The United States benefits if China improves its energy efficiency and emits less carbon dioxide, or improves its public health systems. In this world, institutional networks and connectedness are an important source of information and of national power, and the most connected states are the most powerful. Washington has some sixty treaty allies while China has few. Unfortunately, as Mira Rapp-Hooper recently argued, the United States is squandering that power resource.

In the past, the openness of the United States enhanced its capacity to build networks, maintain institutions, and sustain alliances. But will that openness and willingness to engage with the rest of the world prove sustainable in the current populist mood of American domestic politics? Even if the United States possesses more hard military and economic power than any other country, it may fail to convert those resources into effective influence on the global scene. Between the two world wars, America did not and the result was disastrous.

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

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

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

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

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

### Adv---Modelling

#### Advantage 2 is Modeling---

#### Global competition standards focus on consumer welfare

Marianela Lopez-Galdos 17. “Antitrust in 60 Seconds: Is the Consumer Welfare Standard Appropriate?” Disruptive Competition Project. 11-17-17. https://www.project-disco.org/competition/111717-antitrust-in-60-seconds-is-the-consumer-welfare-standard-appropriate/

In the rest of the world, including the European Union, most competition systems were put in place in the post-war periods. As such, the pursuit of pluralistic goals guided by public interest concerns through the competition system was a method by which these toddling democracies sought to boost and defend their nascent democratic process. That being said, competition systems have evolved, and mature ones have narrowed the antitrust analysis to focus on consumer welfare. In this context, it is noteworthy that the UN and OECD have separately concluded that many competition systems pursue consumer welfare as the primary competition goal. In 1995, UNCTAD concluded that “There has in fact been an increasing convergence in the provisions or the application of competition laws over the laws two decades. Competition systems in many countries are now placing relatively greater emphasis upon the protection of competition, as well as upon efficiency and competitiveness criteria, rather than upon other public interest goals”.

#### Replacing the federal consumer welfare standard prevents global fascism.

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After World War II, the United States engaged in a historic effort to rebuild Europe and Japan through the Marshall Plan. While the story of the Marshall Plan is well known, what is less commonly understood is that the United States exported aggressive antitrust laws to Europe during those post-war years. The Marshall Plan antitrust advisors believed that the massive consolidation in the German economy facilitated and sustained fascism, and they argued that a democratic society required a democratic economy.26 Today, in the context of increasing concentration, rising authoritarianism, and foreign governments commingling state and markets through state-owned enterprises and state capitalism, promoting economic democracy abroad should be an essential foreign policy objective. And yet, the text of the Trans-Pacific Partnership, a trade agreement designed by the Obama Administration, established the objectives of competition policy as “economic efficiency and consumer welfare,” a narrowly drawn and ideological conception of the purposes of antitrust law that has no basis in U.S. statutory law.27 Presidents and their administrations should abandon these cramped views of antitrust and instead encourage the adoption of more aggressive antitrust laws abroad.

#### Global use of the consumer welfare standard fuels populism.

Frederic Jenny 19. ESSEC Business School and OECD Competition Committee. “POPULISM, FAIRNESS AND COMPETITION: SHOULD WE CARE AND WHAT COULD WE DO?” The Japanese Economic Review. Vol. 70, No. 3, September 2019. https://onlinelibrary.wiley.com/doi/full/10.1111/jere.12232

Other competition legal scholars have called attention to the fact the socioeconomic social contract is breaking down. For example, Gal (2019) argues that: A growing number of citizens believe that the promises of the competition based market system, which form an important part of the implicit social contract, are not fulfilled and that capitalistic markets are no longer working in their favour. Indeed, statistics indicate that social mobility is low; that wealth is aggregated disproportionately in the hands of the already well-off; that wealth inequality keeps rising; that several large firms dominate the digital economy, thereby blocking at least some of the promises that technological changes were thought to bring about; that technological changes such as robotics create significant disruption effects and have negative implications on the labor market; or that education and social security do not create viable solutions for workers in order to ensure that wide geographic areas or demographic groups are not significantly and irreparably harmed. If one recognises the fact that the unfairness of the result of competition may be one of the sources of populism and that a rebalancing of the benefits of the competitive process is in order to make economic competition tolerable, the question is how to achieve it. Because the redistributive tools we have do not seem to be adequate, some of the hotly debated issues are whether we should be more cautious about entering into trade agreements with countries having widely different social and economic environments or rules and, at the domestic level, whether antitrust or competition law enforcement should concern itself with the fairness of the competitive process. Concerning antitrust or competition law enforcement three main arguments have been put forward against the inclusion of fairness considerations in the enforcement of anti- trust and competition law. First, the concept of fairness is vague; second, taking into consideration fairness would entail a social cost in terms of efficiency; and third, competition authorities are not equipped to trade fairness against efficiency considerations. Trebilcock and Ducci (2017) consider the vagueness of the notion of fairness and the necessity to specify the notions of fairness which could be relevant for competition. They usefully distinguish different notions of fairness that are pertinent to domestic markets: vertical fairness (between producers and consumers); horizontal fairness on the demand side (between consumers); horizontal fairness on the supply side (between producers); and procedural fairness (due process and private enforcement). One can easily show that antitrust is congruent with fairness with respect to horizontal fairness among suppliers in the sense that competition or antitrust law enforcement aims at eliminating the barriers to entry or to development, which prevent competitors from entering new markets or competing on the merits with established firms. This dimension of competition does not seem particularly problematic from the standpoint of fairness. One can also mention the fact that competition law, to the extent that it aims at eliminating discriminatory practices (as in the European competition law where article 102 prohibits firms with market power from directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, or from applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage), goes some way toward meeting the horizontal fairness condition for consumers. The question of whether the way in which competition laws are implemented meet vertical fairness criteria is more complex. Some, like Trebilcock and Ducci, argue that the goal of protecting consumer welfare assigned in most countries to competition law is a somewhat clumsy attempt to bring into competition law fairness issues which are alien to what which competition law should be concerned with. For example, they write: Despite being usually justified by a distributive justice rationale, we believe that the consumer welfare standard does not vindicate distributional equity concerns for consumers vis-a-vis producers, and we believe that such choice of welfare standard does not represent an optimal tool for redistributive goals. On the contrary, we view the consumer welfare standard as resulting from a mix of poorly defined distributive concerns and more political economy-oriented explanations. Under the latter perspective, the ascendance of the consumer welfare standard may be interpreted as a political bargain between self-interested groups of producers (primarily large firms defending the efficiency benefits of economies of scale) and consumers (including final consumers, small buyers, farmers), where the concept of ‘consumer welfare’ can be seen as a more acceptable form of welfare standard for non-specialist audiences, which would politically allow the advancement of economic goals in the competition policy domain.

#### Populism causes extinction.

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The international system is at a historical inflection point. As Asia continues its economic ascent, two centuries of Western domination of the world, first under Pax Britannica and then under Pax Americana, are coming to an end. The West is losing not only its material dominance but also its ideological sway. Around the world, democracies are falling prey to illiberalism and populist dissension while a rising China, assisted by a pugnacious Russia, seeks to challenge the West’s authority and republican approaches to both domestic and international governance. U.S. President Joe Biden is committed to refurbishing American democracy, restoring U.S. leadership in the world, and taming a pandemic that has had devastating human and economic consequences. But Biden’s victory was a close call; on neither side of the Atlantic will angry populism or illiberal temptations readily abate. Moreover, even if Western democracies overcome polarization, beat back illiberalism, and pull off an economic rebound, they will not forestall the arrival of a world that is both multipolar and ideologically diverse. History makes clear that such periods of tumultuous change come with great peril. Indeed, great-power contests over hierarchy and ideology regularly lead to major wars. Averting this outcome requires soberly acknowledging that the Western-led liberal order that emerged after World War II cannot anchor global stability in the twenty-first century. The search is on for a viable and effective way forward. The best vehicle for promoting stability in the twenty-first century is a global concert of major powers. As the history of the nineteenth-century Concert of Europe demonstrated—its members were the United Kingdom, France, Russia, Prussia, and Austria—a steering group of leading countries can curb the geopolitical and ideological competition that usually accompanies multipolarity. Concerts have two characteristics that make them well suited to the emerging global landscape: political inclusivity and procedural informality. A concert’s inclusivity means that it puts at the table the geopolitically influential and powerful states that need to be there, regardless of their regime type. In so doing, it largely separates ideological differences over domestic governance from matters of international cooperation. A concert’s informality means that it eschews binding and enforceable procedures and agreements, clearly distinguishing it from the UN Security Council. The UNSC serves too often as a public forum for grandstanding and is regularly paralyzed by disputes among its veto-wielding permanent members. In contrast, a concert offers a private venue that combines consensus building with cajoling and jockeying—a must since major powers will have both common and competing interests. By providing a vehicle for genuine and sustained strategic dialogue, a global concert can realistically mute and manage inescapable geopolitical and ideological differences. A global concert would be a consultative, not a decision-making, body. It would address emerging crises yet ensure that urgent issues would not crowd out important ones, and it would deliberate on reforms to existing norms and institutions. This steering group would help fashion new rules of the road and build support for collective initiatives but leave operational matters, such as deploying peacekeeping missions, delivering pandemic relief, and concluding new climate deals, to the UN and other existing bodies. The concert would thus tee up decisions that could then be taken and implemented elsewhere. It would sit atop and backstop, not supplant, the current international architecture by maintaining a dialogue that does not now exist. The UN is too big, too bureaucratic, and too formalistic. Fly-in, fly-out G-7 or G-20 summits can be useful but even at their best are woefully inadequate, in part because so much effort goes toward haggling over detailed, but often anodyne, communiqués. Phone calls between heads of state, foreign ministers, and national security advisers are too episodic and often narrow in scope. Fashioning major-power consensus on the international norms that guide statecraft, accepting both liberal and illiberal governments as legitimate and authoritative, advancing shared approaches to crises—the Concert of Europe relied on these important innovations to preserve peace in a multipolar world. By drawing on lessons from its nineteenth-century forebearer, a twenty-first-century global concert can do the same. Concerts do lack the certitude, predictability, and enforceability of alliances and other formalized pacts. But in designing mechanisms to preserve peace amid geopolitical flux, policymakers should strive for the workable and the attainable, not the desirable but impossible. A GLOBAL CONCERT FOR THE TWENTY-FIRST CENTURY A global concert would have six members: China, the European Union, India, Japan, Russia, and the United States. Democracies and nondemocracies would have equal standing, and inclusion would be a function of power and influence, not values or regime type. The concert’s members would collectively represent roughly 70 percent of both global GDP and global military spending. Including these six heavyweights in the concert’s ranks would give it geopolitical clout while preventing it from becoming an unwieldy talk shop. Members would send permanent representatives of the highest diplomatic rank to the global concert’s standing headquarters. Although they would not be formal members of the concert, four regional organizations—the African Union, Arab League, Association of Southeast Asian Nations (ASEAN), and Organization of American States (OAS)—would maintain permanent delegations at the concert’s headquarters. These organizations would provide their regions with representation and the ability to help shape the concert’s agenda. When discussing issues affecting these regions, concert members would invite delegates from these bodies as well as select member states to join meetings. For example, were concert members to address a dispute in the Middle East, they could request the participation of the Arab League, its relevant members, and other involved parties, such as Iran, Israel, and Turkey. A global concert would shun codified rules, instead relying on dialogue to build consensus. Like the Concert of Europe, it would privilege the territorial status quo and a view of sovereignty that precludes, except in the case of international consensus, using military force or other coercive tools to alter existing borders or topple regimes. This relatively conservative baseline would encourage buy-in from all members. At the same time, the concert would provide an ideal venue for discussing globalization’s impact on sovereignty and the potential need to deny sovereign immunity to nations that engage in certain egregious activities. Those activities might include committing genocide, harboring or sponsoring terrorists, or severely exacerbating climate change by destroying rainforests. Policymakers should strive for the workable and the attainable, not the desirable but impossible. A global concert would thus put a premium on dialogue and consensus. The steering group would also acknowledge, however, that great powers in a multipolar world will be driven by realist concerns about hierarchy, security, and regime continuity, making discord inescapable. Members would reserve the right to take unilateral action, alone or through coalitions, when they deem their vital interests to be at stake. Direct strategic dialogue would, though, make surprise moves less common and, ideally, unilateral action less frequent. Regular and open consultation between Moscow and Washington, for example, might have produced less friction over NATO enlargement. China and the United States are better off directly communicating with each other over Taiwan than sidestepping the issue and risking a military mishap in the Taiwan Strait or provocations that could escalate tensions. A global concert could also make unilateral moves less disruptive. Conflicts of interest would hardly disappear, but a new vehicle devoted exclusively to great-power diplomacy would help make those conflicts more manageable. Although members would, in principle, endorse a norm-governed international order, they would also embrace realistic expectations about the limits of cooperation and compartmentalize their differences. During the nineteenth-century concert, its members frequently confronted stubborn disagreements over, for instance, how to respond to liberal revolts in Greece, Naples, and Spain. But they kept their differences at bay through dialogue and compromise, returning to the battlefield in the Crimean War in 1853 only after the revolutions of 1848 spawned destabilizing currents of nationalism. A global concert would give its members wide leeway when it comes to domestic governance. They would effectively agree to disagree on questions of democracy and political rights, ensuring that such differences do not hinder international cooperation. The United States and its democratic allies would not cease criticizing illiberalism in China, Russia, or anywhere else, and neither would they abandon their effort to spread democratic values and practices. On the contrary, they would continue to raise their voices and wield their influence to defend universal political and human rights. At the same time, China and Russia would be free to criticize the domestic policies of the concert’s democratic members and publicly promote their own vision of governance. But the concert would also work toward a shared understanding of what constitutes unacceptable interference in other countries’ domestic affairs and, as a result, are to be avoided. OUR BEST HOPE Establishing a global concert would admittedly constitute a setback to the liberalizing project launched by the world’s democracies after World War II. The proposed steering group’s aspirations set a modest bar compared with the West’s long-standing aim of spreading republican governance and globalizing a liberal international order. Nonetheless, this scaling back of expectations is unavoidable given the twenty-first century’s geopolitical realities. The international system, for one, will exhibit characteristics of both bipolarity and multipolarity. There will be two peer competitors—the United States and China. Unlike during the Cold War, however, ideological and geopolitical competition between them will not encompass the world. On the contrary, the EU, Russia, and India, as well as other large states such as Brazil, Indonesia, Nigeria, Turkey, and South Africa, will likely play the two superpowers off each other and seek to preserve a significant measure of autonomy. Both China and the United States will also likely limit their involvement in unstable zones of less strategic interest, leaving it to others—or no one—to manage potential conflicts. China has long been smart enough to keep its political distance from far-off conflict zones, while the United States, which is currently pulling back from the Middle East and Africa, has learned that the hard way. The international system of the twenty-first century will therefore resemble that of nineteenth-century Europe, which had two major powers—the United Kingdom and Russia—and three powers of lesser rank—France, Prussia, and Austria. The Concert of Europe’s primary objective was to preserve peace among its members through a mutual commitment to upholding the territorial settlement reached at the Congress of Vienna in 1815. The pact rested on good faith and a shared sense of obligation, not contractual agreement. Any actions required to enforce their mutual commitments, according to a British memorandum, “have been deliberately left to arise out of the circumstances of the time and of the case.” Concert members recognized their competing interests, especially when it came to Europe’s periphery, but sought to manage their differences and prevent them from jeopardizing group solidarity. The United Kingdom, for example, opposed Austria’s proposed intervention to reverse a liberal revolt that took place in Naples in 1820. Nonetheless, British Foreign Secretary Lord Castlereagh eventually assented to Austria’s plans provided that “they were ready to give every reasonable assurance that their views were not directed to purposes of aggrandizement subversive of the Territorial System of Europe.” A global concert would give its members wide leeway when it comes to domestic governance. A global concert, like the Concert of Europe, is well suited to promoting stability amid multipolarity. Concerts limit their membership to a manageable size. Their informality allows them to adapt to changing circumstances and prevents them from scaring off powers averse to binding commitments. Under conditions of rising populism and nationalism, widespread during the nineteenth century and again today, powerful countries prefer looser groupings and diplomatic flexibility to fixed formats and obligations. It is no accident that major states have already been turning to concert-like groupings or so-called contact groups to tackle tough challenges; examples include the six-party talks that addressed North Korea’s nuclear program, the P5+1 coalition that negotiated the 2015 Iran nuclear deal, and the Normandy grouping that has been seeking a diplomatic resolution to the conflict in eastern Ukraine. The concert can be understood as a standing contact group with a global purview. Separately, the twenty-first century will be politically and ideologically diverse. Depending on the trajectory of the populist revolts afflicting the West, liberal democracies may well be able to hold their own. But so too will illiberal regimes. Moscow and Beijing are tightening their grip at home, not opening up. Stable democracy is hard to find in the Middle East and Africa. Indeed, democracy is receding, not advancing, worldwide—a trend that could well continue. The international order that comes next must make room for ideological diversity. A concert has the necessary informality and flexibility to do so; it separates issues of domestic rule from those of international teamwork. During the nineteenth century, it was precisely this hands-off approach to regime type that enabled two liberalizing powers—the United Kingdom and France—to work with Russia, Prussia, and Austria, three countries determined to defend absolute monarchy. Finally, the inadequacies of the current international architecture underscore the need for a global concert. The rivalry between the United States and China is heating up fast, the world is suffering through a devastating pandemic, climate change is advancing, and the evolution of cyberspace poses new threats. These and other challenges mean that clinging to the status quo and banking on existing international norms and institutions would be dangerously naive. The Concert of Europe was formed in 1815 owing to the years of devastation wrought by the Napoleonic Wars. But the lack of great-power war today should not be cause for complacency. And even though the world has passed through previous eras of multipolarity, the advance of globalization increases the demand for and importance of new approaches to global governance. Globalization unfolded during Pax Britannica, with London overseeing it until World War I. After a dark interwar hiatus, the United States took up the mantle of global leadership from World War II into the twenty-first century. But Pax Americana is now running on fumes. The United States and its traditional democratic partners have neither the capability nor the will to anchor an interdependent international system and universalize the liberal order that they erected after World War II. The absence of U.S. leadership during the COVID-19 crisis was striking; each country was on its own. President Biden is guiding the United States back to being a team player, but the nation’s pressing domestic priorities and the onset of multipolarity will deny Washington the outsize influence it once enjoyed. Allowing the world to slide toward regional blocs or a two-bloc structure similar to that of the Cold War is a nonstarter. The United States, China, and the rest of the globe cannot fully uncouple when national economies, financial markets, and supply chains are irreversibly tethered together. A great-power steering group is the best option for managing an integrated world no longer overseen by a hegemon. A global concert fits the bill.

#### Specifically, the Philippines mirrors the US consumer welfare standard---considering the Aff’s standard promotes development.

Jose Maria L. Marella 18. J.D., University of the Philippines (UP) College of Law. “ADMINISTRATIVE WILL TO POWER: ARTICULATING THE GOALS OF ANTITRUST AND PROPOSING THEREFOR A REGULATORY FRAMEWORK” Philippine Law Journal. Vol. 91. 2018.

The complexities of modern government have often led Congress- whether by actual or perceived necessity-to legislate broad policy goals and general statutory standards, leaving the specific policy options to the discretion of an administrative body. 2 In this regard, the Philippine Competition Commission ("PCC")-the administrative body mandated to implement the Philippine Competition Act -has taken great strides in advancing the policy objectives of economic efficiency and consumer welfare. That the two policy objectives figure greatly in the exercise of the PCC's mandate is evident from its regulatory issuances and participation in relevant proceedings. A. Regulatory Issuances In its Implementing Rules and Regulations ("IRR"), the PCC adopts the "substantial lessening of competition" ("SLC") test,4 a Jurisprudential standard crafted and developed by foreign jurisdictions to weigh the anticompetitive effects of certain transactions. By assessing market indicators such as firm rivalry, prices, quality, and availability of goods and services, the SLC test filters out agreements that reduce competitive pressure among firms and disincentivize them from becoming more efficient and innovative.5 The IRR also allows the PCC to forbear-or desist from applying the provisions of the PCA-when, among other considerations, forbearance is consistent with the benefit and welfare of the consumers. 6 Economic efficiency and consumer welfare also take center stage in the PCC's Rules on Enforcement Procedure ("Enforcement Rules"), the rules and regulations governing hearings, investigation, and other proceedings on anti-competitive agreements, abuse of dominant market position, and other violations of the PCA.7 Preliminary inquiries-the PCC proceedings that parallel the prosecutor's preliminary investigation in criminal cases-are to be conducted with due regard to consumer welfare.8 Interim measures may be issued against entities when their acts would result in a material and adverse effect on consumers or competition in the market.9 Upon termination of enforcement proceedings, the PCC will determine the propriety of imposing conclusive remedies with the aim of maintaining, enhancing, or restoring competition in the market.10 Similar to the IRR, the PCC's Rules on Merger Procedure ("Merger Rules") employs the SLC test in determining whether a proposed merger or acquisition will, post-transaction, reduce economic efficiency or impair consumer welfare; in determining the appropriateness of imposing interim measures; 12 or in considering whether, before clearing a merger or acquisition, the parties must abide by certain conditions to remedy, prevent, or mitigate competitive harm. 13 In addition, pursuant to its market surveillance function, the PCC is empowered to motu proprio conduct a review of mergers that are reasonably foreseen to breach the SLC test. 14 Intervening by way of an amicus curiae brief, the PCC apprised the Supreme Court of the competition issue intertwined with the legal question in a pending case that assailed, as an ultra vires expansion of statutory language, the regulation issued by the Philippine Contractors Accreditation Board that created a nationality restriction that was unsupported by the governing statutory text.15 The PCC supported striking down the regulation, arguing that, on the basis of economic literature and empirical data, the nationality restriction constituted a regulatory barrier to entry that unduly favored domestic contractors to the detriment of foreign contractors. In its argument that the regulation inordinately restricts market competition, the PCC enunciated the following principles: Consumer welfare, which in this case refers to the welfare of both households and other businesses, is maximized when competition allows consumers to access and choose the most efficient producers, regardless of the service provider's nationality. Indeed, it is a settled principle in economics that if there are many players in the market, healthy competition will ensue. The competitors will try to outdo each other in terms of quality and price in order to survive and profit. Competition therefore results in better quality products and competitive prices, which redound to the benefit of the public.16 In its recent bid to take its legal scuffle with Globe and PLDT17 to the Supreme Court,18 the PCC donned its mantle "to level the playing field across all markets; to review the competitive implications of large transactions; and to actively investigate, prosecute, and sanction cases of cartelistic behaviors that prevent, restrict, or lessen market competition." 19 These mandates would be carried out to "[encourage] innovation among market players, [reward] their efficient and productive use of resources, and ultimately [redound] to the benefit of consumers by lowering prices and enhancing their right of choice over goods and services offered in the market. 20 Significantly, the general public has acquiesced to the perception that the PCC champions economic efficiency and consumer welfare. News reports have consistently adverted to the PCA as a landmark piece of legislation that will enhance and promote these two policy objectives. Even lawmakers have acknowledged the PCC's critical role in improving market competition. Senator Juan Miguel Zubiri, addressing PCC's representative, Commissioner Johannes Bernabe, in a legislative hearing concerning the telecommunications sector, stated: "I'm really one with you [...] So you guys have to help us out [...] We are fighting giants. But as I said, the least that can happen is [that they] shape up and give us better service[,] or the best is that more players can come in and give us the best service[.]"21 But are such policy objectives all there is to the PCA? Or does the statutory text, alone or in conjunction with related legal materials, admit of other governing principles? Addressing such questions is crucial as the PCA may also cover other goals that have not been explicitly recognized. The law, after all, admits of different interpretations. 22 This then requires stakeholders and other government bodies to defer to the "sound discretion of the government agency entrusted with the regulation of activities coming under [its] special and technical training and knowledge[.]" 23 In such case, the PCC might be undercutting its own potential to make even greater strides in other aspects of national development. Recognizing these other objectives will greatly influence the PCC's exercise of its mandate and, more importantly, could translate to better gains in national development. By no means does this Note claim that the PCC is severely limiting the exercise of its functions-whether consciously or subconsciously. Rather, it simply articulates other equally important antitrust considerations which can be construed from the statutory text-considerations which the PCC must also devote attention to, and which the public, considering the incipient but technical field of competition law, 24 must appreciate.

#### The current standard results in economic injury.

Jose Maria L. Marella 18. J.D., University of the Philippines (UP) College of Law. “ADMINISTRATIVE WILL TO POWER: ARTICULATING THE GOALS OF ANTITRUST AND PROPOSING THEREFOR A REGULATORY FRAMEWORK” Philippine Law Journal. Vol. 91. 2018.

2. Income Inequality in the Philjopines Philippine economic literature establishes that market concentration, and conversely, weak market competition, **lead to limited growth and productivity.** The interplay of behavioral, regulatory, and structural constraints fosters within numerous industries the rise of an exclusive circle of dominant players.1 47 Antitrust analysis relies on economic indicators such as the price- cost margin ("PCM") and the Herfindahl-Hirschman Index ("HHI), a ratio used to determine industrial concentration, to compare the monopolistic price markup and competitive prices. "In the presence of market power, the firms will be able to set prices above those prevailing under competitive conditions, leading to excessive economic profits or 'rents'." 148 These measures **directly affect the distribution of wealth**. A high HHI means that the industry is concentrated; only a few firms deliver the bulk of industry output and reap the profits therein. On the other hand, a high PCM means that firms are effectively denying to consumers what they could have enjoyed under competitive conditions. Using such economic tools in conjunction with industry analysis, one study found that: (i) deliberate government coddling led to concentration in telecommunications, power, manufacturing, textiles, and cement; (ii) cartel-like behavior persists in flour milling, cement, and inter-island shipping; (iii) entry barriers led to comparatively high domestic prices when compared to border prices; and (iv) entry barriers **sustained the operation of inefficient firms and allowed them to generate monopoly rents.** 149 The flipside of the issue is that more inclusive industries lead to lower figures of the HHI and PCM. One of the Philippines' best chronicled "success stories" on the matter relates to the airline industry. Owing to the various trade liberalization measures implemented during the 1990s-among them the deregulation of aviation-PCMs declined from 67% to 48%. The entry of new firms served to depress monopolistic prices and disperse the 150 profits enjoyed by a previous monopoly. The income inequality concern becomes **even more alarming** when one considers the interests of those within the poorest income strata in the Philippines. Latest statistics indicate that poverty incidence 51 **is at 21.6%.** This figure expresses that, as a fraction of the total number of individuals in the Philippines, around one-fifth live below the poverty threshold. The hardest-hit sectors are the farmers, fisher folk, and children, with poverty incidences at 3 4 .3 %, 3 4 .0%, and 3 1. 4 %, respectively. 152 Moreover, total family expenditure is broken down into food at 42.8%; housing, water, 945 electricity, and other fuels at 1 .1%; and education at . %. Such **figures spell destitution, especially considering that basic commodities are prone to cartelization** while electricity and fuels industries are lorded over by oligopolies. Thus, the stage is **set for antitrust and competition policy to step in.** In order to include redistributive justice as among its "final causes," 154 the law's advocates must identify the specific mechanisms through which economic wealth can be equitably distributed.

#### Equitable growth in the Philippines prevents piracy.

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The Sulu-Celebes Sea is one of the major shipping routes of Southeast Asia.64 Annually, US$40 billion worth of goods pass through the Sulu-Celebes Sea, creating great economic opportunities for inhabitants of the region in logistics management, ship maintenance, and other complementary sectors.65 Moreover, its marine biodiversity66 generates economic opportunities for eco-tourism67, fish farming, and reef-sourced biomedical products.68 However, the threats arising from crime, piracy and terrorism have significantly impacted investors’ confidence in that region. Notwithstanding these opportunities, the labour force participation rate of the Bangsamoro Autonomous Region of Muslim Mindanao (BARMM) is only 62.3 percent for individuals who are above 15 years old, signalling a high unemployment figure despite the reported 3.8 percent unemployment rate. 69 More critically, low levels of formal education in the BARMM have led to limits on workforce development.70 Non-Governmental Organisations have identified coastal **poverty71** **and relative economic depression72** as the **key factors** that may induce grievances and lead to a sense of relative deprivation and injustice for which affected individuals feel the need to rebel against. This then drives **individuals into engaging in illicit activities and political violence.**73 While comprehensive data on the youth unemployment rates in the region is unavailable, the high intensity of conflict and low formal education attainment reduces economic opportunities among youth. Based on the youth bulge theory, spaces with high youth population and high youth unemployment are more prone to civil conflict.74 The poor economic outlook, coupled with existing political grievances, facilitates the continuous recruitment of disgruntled youth **into militancy**.75 The coasts of the Sulu-Celebes Seas has observed high proportion of youth participating in Abu Sayyaf activities. This includes the infamous Ajang Ajang unit, which comprised sons of deceased Abu Sayyaf members. Much of the Abu Sayyaf militant strength is derived from its youth. Notable leaders like Isnilon Hapilon (49 years old when killed), leader of the Islamic State’s East Asian Wilayah, participated in militancy since he was 17.76 Amin Baco (35 years old when killed), who was touted to succeed Hapilon, participated in Islamist insurgencies since he was 16.77 Nonetheless, more research onto this topic is required to investigate the relationship between the high youth recruitment and economic deprivation at the region. The COVID-19 pandemic has decimated the economies of the TCA member states. Youth unemployment for the Philippines, Indonesia, and Malaysia has risen significantly as a result of measures to curtail the spread of the virus.78 This trend **worsens the existing socio-political grievances** of the population, thereby **increasing** youth **participation in regional militancy**.79 Ultimately, governments must adopt both hard and soft power to build lasting peace in the region.

#### Goes nuclear---terrorist-piracy nexus guarantees escalation.

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The terrorism-piracy nexus and port security

In assessing the nature of maritime terrorist activity in Asia, it is important to study the terrorism-piracy nexus – not least because pirates have in the past financed terrorist activity.[59]Evidence of a linkage between the terrorists and pirates first emerged in May 2003, when the M/V Pen rider, a Malaysian-registered oil tanker, was attacked off the coast of Malaysia, and three crew members were taken hostage.[60] After ship owners paid $100,000 to free the crew, it emerged that the attackers were associated with the Free Aceh Movement, an insurgent group operating in Indonesia. The receipt of a ransom of $1.2 million by the Somali pirates to free a Spanish fishing vessel and 26 hostages in 2008 provided more proof of a possible link between terrorists and pirates; reportedly, the Al-Shabaab had received a five-percent cut. A year later, when the terror group hired pirates to smuggle in members of Al Qaeda to Somalia, the terror-piracy linkage seemed virtually certain.[61]

In recent years, terrorists and pirates have appeared to draw closer, even if the exact nature of their collaboration is not clear. Somali pirates and terrorists are said to have worked together in arms trafficking, and Al-Shabaab is said to have even have trained pirates for ‘duties’ at sea.[62]An investigation by the United Nations (UN) in 2017 found evidence of collusion between pirates and the Al Shabaab, including the possibility that pirates helped the latter smuggle weapons and ammunition into Somalia.[63] As discussed earlier, in Southeast Asia, the Abu Sayaff’s turn to piracy has resulted in millions earned via ransom payments.[64] Its cadres have used the revenue earned for pirate activity to expand the radical organisation’s presence in Southeast Asia.

The terror-piracy linkage is important because it highlights the causal mechanism behind rising violence at sea. The task of maritime security agencies becomes harder, however, when the lines between terrorism and piracy begin blurring, particularly in Southeast Asia, where the Abu Sayyaf has alternated between piracy and terrorism. Today’s pirates are trained fighters onboard speedboats, armed not only with automatic weapons, hand-held missiles and grenades but also and global positioning systems; professional mercenaries that loop effortlessly between rent-seeking and violent acts. Their objectives are as much ideological, as they are material.

ISPS code and littoral security

While most discussions around maritime terrorism presume a threat to sea-borne assets, port security constitutes the bigger challenge. Terrorists have long had seaports on their crosshairs, because of the latter’s role in trade and economic development. In recent years, there has been a significant increase in freight traffic, with key ports in Asia transformed into global trading hubs. In keeping with the growing importance of port-enabled trade, regional governments have taken better measures to protect ships and onshore facilities. In many ports, authorities have increased guards, gates, and security cameras, even introducing identification card programs to screen those with access to critical port infrastructure. The installation of radiation detectors has been particularly helpful in screening critical cargo and identifying suspicious shipments.

Yet, not even the best ports in Asia are able to track and monitor large containers comprehensively. With a rising quantum of cargo to be handled every day, port authorities find it impractical to scan each and every container being offloaded from cargo ships.[65]Container scanning in many ports is in fact a largely random exercise, with authorities insisting that shippers provide manifests of what is contained in cargo bins.[66]

The lack of effective checks on ports brings up the possibility of the use of containers as weapons to smuggle in arms, explosive materials or the terrorists themselves. While terrorists would not possibly target cargo ships directly, the latter could be used to transport weapons or to sabotage commercial operations. A dirty-bomb in an illicit cargo container of a cargo ship could cause a port shutdown and huge commercial disruption.[67] Even a failed attempt to smuggle a device into a major transshipment hub would significantly impact port operations.

After the 9/11 incident in the United States, the International Maritime Organization (IMO) had established the International Ship and Port Facility Security (ISPS) Code—a set of maritime regulations designed to help detect and deter threats to international shipping. The code subjects ships to a system of survey, verification, certification and control to ensure that the security measures prescribed by the IMO are implemented by member countries. It also provides a standardised, consistent framework for evaluating risk and gauging vulnerabilities of ships and ports facilities, laying down principles and guidelines for governments, port authorities and shipping companies, making compliance mandatory.[68]

The code, however, has not been effective in a way originally intended.[69]Firstly, the code is based on the experience of 9/11 and early piracy activity off Somalia. No amendments or revisions have been made with regard to new types of security threats encountered in recent years. The exclusion of vessels less than 500 tonnes, and all fishing vessels regardless of their size, is a further impediment in the code’s implementation, as terrorists have sought to use smaller boats to smuggle weapons and ammunition rarely subject to regulation.[70]

Another shortcoming is that the code does not include official monitoring procedures for security matters. Unlike the International Safety Management Code (ISM) that prescribes office audits by internal and external sources, the ISPS enumerates general guidelines and precautions—a standardised template for evaluating risks on many different types, sizes and categories of vessels and facilities.[71] The code also does not specify ways to strengthen capability to protect against new forms of terrorism, such as drone attacks.[72] With no legal obligation to implement regulations, port authorities are unwilling to make necessary investments in security measures.

The lack of national legislation/guidelines is another hurdle in the code’s implementation. Regional governments have neither enacted necessary domestic legislation to fight terrorists nor allotted resources to implement security measures.[73] In India, for instance, there is no comprehensive maritime security policy for protection of the commercial maritime infrastructure and supply chains.[74]A new Merchant Shipping Bill[75] in 2016 improved transparency and effective delivery of services, but has failed to address security concerns.

Given the complicated mix of variables contributing to port security, a study of security measures adopted by the civil aviation industry might offer some useful pointers. The latter’s efforts to prevent hijackings of commercial aircraft over the past four decades has been widely hailed as a success. Developed in the late 1960s, the international legal regime governing civilian flight operations was significantly upgraded after the attacks of 11 September 2001. The United States’ efforts to bring in legislation to regulate foreign airlines and flights from foreign airports have been particularly helpful. In concert with other international conventions drafted by the UN International Civil Aviation Organization (ICAO), the regulatory regime has deterred terrorists and criminals from targeting aircraft.[76]

This may hold important lessons for port security; in particular, approaches used in the international legal regime governing civil aviation to eliminate safe havens for pirates and terrorists by ensuring legal accountability. A study of security in the aviation sector could offer important tips on how port security systems could be mobilised to encourage best management practices; the importance of freezing assets of those who fund piracy enterprises; and the utility of enhancing communication and coordination among the various stakeholders relevant to the fight against piracy and terrorism.[77]

A next terrorist attack: Gauging the odds

To design policies that help combat maritime terrorism it is important to assess the likely nature of future attacks and their probable targets. Future terrorist attacks could be directed against four kinds of targets: warships, supertankers, passenger ships and port facilities. The most vulnerable and attractive targets remain tankers out at sea. The recent attacks on tankers in the Persian Gulf revealed that the threat is evolving and could now include unmanned vehicles.[78] More damaging would be the seizure and sinking of an oil-carrying tanker in a congested space, crippling the flow of maritime traffic. To get a sense of the extent of damage such an attack would cause, the Limburg incident in 2002 caused a massive spillage of oil (almost 90,000 tonnes) that took many weeks to clear.[79]

Another kind of attack could be on cruise ships out at sea. Big cruise ships are a lucrative target since they are lightly defended and relatively easily accessible.[80]An enquiry into the Achille Lauro incident in October 1984 highlighted fundamental deficiencies in safety procedures. Apparently, checks on passengers in the run-up to that fateful incident had not been foolproof. Despite acting nervously and even displaying anti-social behaviour, the Palestinian hijackers did not arouse the suspicions of passengers and crew.[81] While safety procedures have since improved, security procedures at ports and aboard cruise ships (with certain exceptions) are far from immaculate. During the Super Ferry incident in the Philippines in 2004, Abu Sayyaf operatives disguised as tourists smuggled 20 sticks of explosives that were stored inside an emptied out TV set.[82] There is some evidence that cruise shipping companies in Asia and Africa continue with the same lax approach that enabled that devastating attack.

The most likely venue of a future terrorist strike, however, might be inside a port facility, and it could possibly involve a ‘lone wolf’ with a loose affiliation to a bigger terrorist group. Ports are an attractive target because many of the tactical problems that terrorists face in orchestrating attacks on ships in the high seas do not apply to harbors, ports, or shore-based maritime facilities. Terrorists realise that the containerised supply chain is complex, and creates many opportunities for isolated acts of terrorism. An ineffective point of check, for instance, could allow a jihadi inside a container to detonate a vast quantity of explosives or a low-grade nuclear device; inadequate surveillance in a vessel could lead a jihadi diver to plant an explosives improvised explosive device (IED). While many ports have installed radiation detectors to combat the threat of IED, the pace of installation has been slow, and smaller ports remain vulnerable.

#### The plan solves---US antitrust law is modeled

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The “shot in the dark” that was the U.S. antitrust law system is today no longer solely a domestic field of law. It is now also a critically important component of global economic policy! The system that U.S. judges had evolved to deal with purely domestic problems and that relied on little more than confidence in the capacity of courts to develop reasonable responses to conflicts has been transformed into the central player in efforts to respond effectively to economic and other forms of globalization. It is now a U.S. export product, and the stakes are enormous. What directions and forms will the rules of competition take? Treatment of these issues will be a factor in the future of many countries, including the U.S., and for more than two decades Chicago-Kent has brought transnational competition law to our students, and Chicago-Kent faculty have contributed to the international discussion of these issues. A. Foreign Interactions and Perceptions U.S. antitrust now plays on a global stage, and much will depend on how foreign experts, lawyers, government officials and business leaders see U.S. antitrust. They will make decisions about what to do in their own countries and on the international level. This means that their perspectives on the U.S. system are critical to its roles both at home and abroad, and foreign images of U.S. antitrust have changed radically. Prior to the Second World War, those in Europe who knew anything about U.S. antitrust law (and they were few) generally considered it a mistake. They tended to see it as a failure that actually created more harm than good by forcing companies to merge rather than cooperate. This view predominated in large measure until after the Second World War. The Europeans were developing a different concept of competition law that emphasized administrative control of dominant firms. This conception of competition was spreading rapidly in Europe in the 1920s, but depression and war led to its virtual abandonment. After that war ended, however, U.S. antitrust law became associated with U.S. economic dominance in the “free world.” The real and imagined connections between economic concentration and military expansion in both Germany and Japan convinced many that U.S.-style antitrust law should be used to combat such concentrations. U.S. occupation forces in Germany and Japan imposed U.S. antitrust ideas during the occupation period, and the U.S. insisted that both countries either enact or maintain competition law after the occupation. This increased awareness of these ideas abroad. Perhaps more important, however, was the perception that antitrust was a source of strength for the U.S. economy and thus a potential spur to growth that other countries could employ. U.S.-style antitrust did not, however, always fit well with European legal traditions and institutions, and in most European countries skepticism toward the U.S. model limited progress in protecting competition. In Germany, however, a separate set of ideas about how to protect competition developed in the 1930s and 1940s in the underground, and after the war it became the basis for German antitrust law. From here it spread to the European level and became part of the process of Euro- pean integration. The basic idea of U.S. antitrust law—i.e., protecting the competitive process from restraints—was part of this model of competition law, but the model itself was conceptually and institutionally quite distinct. European scholars and officials in these areas often looked to U.S. antitrust for comparisons and insights into problems, but there was relatively little interaction between U.S. and European forms of competition law until the 1990s. In the 1990s these relationships became far closer and more important for both the U.S. and Europeans. Moreover, the fall of the Soviet Union precipitated widespread interest in market-based approaches around the world and revived the messianic tenor of the U.S. antitrust law community. Many countries that had socialist or other command-based approaches to the organization of economic activity now introduced antitrust laws or significantly increased their investment in the enforcement of such laws. Often they looked to U.S. antitrust officials, lawyers and scholars for help in implementing or evaluating their new activities.

### Adv---Democracy

#### Advantage 3 is Democracy.

#### Congressional inaction in antitrust shifts power to less democratic institutions

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

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

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

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

#### That collapses court legitimacy and constitutional SOP

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

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

#### Judicial activism collapses democracy.

James Muffett 14. Founder & President of Student Statesmanship Institute and President of Citizens for Traditional Values. “The Danger Of Judicial Activism”. Michigan All Rise. 9-8-14. <https://michiganallrise.org/resources/the-danger-of-judicial-activism/>

There is a battle in our nation between those who believe that judges should follow the law as intended by the legislature, and those who think judges have latitude to interpret the law according to their view of what the law ought to be. The latter are referred to as, “activist judges.” When judges insert their own personal bias, they usurp the role of the legislators whom the citizens elect to represent them in deciding disputed, difficult policy issues. Thus, judicial activism undermines the very basis of our representative democracy. It can be argued that activist judges have done more damage to traditional, Judeo-Christian values than the other branches of government combined. The areas of greatest damage include free enterprise, human life, marriage, personal freedoms, property rights and religious liberty. Judges who usurp the authority of the people are not merely incorrect; they are themselves unconstitutional. And they are unjust. In fact, Justice White in his Roe v. Wade dissent opinion, wrote that the court had acted “not in constitutional interpretation, but in the unrestrained imposition of its own, extra-constitutional value preferences.” In addition to short-circuiting the democratic process, this judicial approach creates an environment of unpredictability which ultimately leads to destabilization and more litigation. When judges exercising the power of judicial review are guided by the text, logic, structure, and original understanding of the Constitution and the law, they deserve our respect and gratitude. By operating with this type of judicial oversight, they are playing their part to make constitutional republican government a reality. But where judges usurp democratic legislative authority by imposing on the people their moral and political preferences, under the guise of fairness or empathy, they should be severely criticized and resolutely opposed. It is time for all citizens to wake up to this crisis and work to elect “Rule of Law” judges who exercise constitutional authority only to enforce the law as written and ensure that laws apply to everyone equally.

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

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

3. Implications for Interpretation

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

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

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

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

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

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

#### Democracy solves every impact---it’s comparatively more stable than autocracies

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

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

#### 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.

### Solvency

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

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

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

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

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

Introduction

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

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

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

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

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

#### Congressional antitrust key to democracy---alternative cedes power.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

The recommendation that Congress shift its focus to major issues is particularly critical to reinvigorating Congress’s role in antitrust policy. It is simply more important to probe whether merger enforcement has now been virtually limited to mergers to monopoly than to hold hearings into whether a particular merger in a particular industry is a good idea. Similarly, reasonable people can differ over whether a particular antitrust provision should be enforced more vigorously, less vigorously, or simply repealed, but we doubt any Congress since the passage of the Sherman Act would simply say, “We don’t care, do whatever you want.” We may not like the results of what Congress says on any particular issue, but it remains the only directly democratically accountable branch of government and the one most clearly charged with setting the broad parameters of fundamental public policy. It should speak, as it does in most other areas of our complex economy, and not have its silence used as an excuse for self-interested actors to shift power in their favor when the legislature chooses to turn to other pressing issues of the day.

#### Prioritizing worker welfare solves inequality

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

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

# 2AC

## T

#### “Expand the scope” includes changing CWS.

Gaël Campan 20. Senior Economist at the MEI. The views reflected in this op-ed are his own. "Importing hipster antitrust laws threatens our prosperity". No Publication. 10-15-2020. https://www.iedm.org/importing-hipster-antitrust-laws-threatens-our-prosperity/

Though imperfect, antitrust or competition laws have historically been relatively stable and have sought to uphold a consumer welfare standard. Seeking to expand the scope of company probes, as the hipster antitrust movement does, could make any business a potential target, as is already the case for the GAFA companies (Google, Apple, Facebook and Amazon). Ultimately, it is the very concept of customer sovereignty that is under siege, for it is consumers — not producers, however big — who steer the ship of commerce, innovation and growth.

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

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

DEFINITIONS2

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

in scope: The new law is limited in scope.

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

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

## States CP

### States CP---Core---2AC [S]

#### 3. CP’s preempted---the NLRA forbids state labor action. We’re reading their author after their card ends

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.

#### 5. Fails---the DOJ and FTC undermine states---specific to licensing boards.

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

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

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

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

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

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

### Coercion---2AC

#### 4. Fails---the federal government will change federal law to allow coercion in order to overcome the states.

Andrew B. Coan 15. Professor at the College of Law, University of Arizona. “Commandeering, Coercion, and the Deep Structure of American Federalism” *Boston University Law Review*, Vol. 95:1. http://www.bu.edu/bulawreview/files/2015/02/COAN.pdf

Second, and more important, commandeering and conditional spending might serve countervailing national interests sufficient to justify whatever risk they pose to federalism. In Printz, for example, Congress had identified a pressing national problem, the solution to which seemed to require—not absolutely, but reasonably—the participation of state law enforcement officers during the five years it would take to bring a federal database online.154 Given the relatively modest risk involved in requiring state officials to perform such a minor task on an interim basis, federal commandeering may well have been cost-justified in this circumstance.155 Of course, the federal government might have purchased the states’ compliance through a non-coercive exercise of the conditional spending power.156 But given the deeply rooted gun culture in many states, both strategic and principled holdouts seem likely to have been a real problem. Of course, these are the problems that arguably justified a national legislative solution in the first instance.

New York is perhaps an even more compelling illustration of the point. The problem of low-level radioactive waste disposal was obviously a national one of substantial import that the states had tried and failed to resolve on their own.157 The legislation New York was required to adopt—establishing a waste disposal site or taking title to all waste produced within its borders—involved far greater burdens than the Brady Act’s background checks.158 But the need for federal action was also greater and the risk to federalism substantially diminished by the fact that New York itself agreed to the federal scheme.159 Moreover, as in Printz, commandeering was used to overcome the same problems of interstate coordination that arguably justified federal legislation in the first instance.160

The same basic analysis holds for Congress’s use of the conditional spending power in NFIB. The Affordable Care Act’s Medicaid expansion responds to a serious problem of interstate coordination in the provision of health insurance to low-income Americans.161 Absent effective coercion of states, there was a real risk that the same coordination problems necessitating federal action would undermine the Act’s effectiveness. The aftermath of the Court’s decision bears this out. Freed from federal coercion, nearly half of the states have refused to participate in the Act’s Medicaid expansion, with obvious spillover effects on other states and the nation as a whole.162 This is strong evidence that constituency relations are important drivers of institutional decision-making but also strong evidence of the damage state constituencies can do in policy spheres better dealt with at the national level.

3. The Lesser of Evils

Finally, as Neil Siegel points out, placing federal commandeering and conditional spending off limits may force the federal government to resort to wholesale preemption of state regulations and the establishment of a new federal enforcement bureaucracy, whose operations would be entirely insulated from local control.163 In cases where this represents a plausible alternative to commandeering, the anti-commandeering principle may actually diminish the influence of local constituencies on the formation and administration of regulatory policy. This point receives further support from the work of Heather Gerken and Jessica Bulman-Pozen, who argue that state governments implementing federal policy under conditional spending and commandeering statutes enjoy substantial flexibility to account for, accommodate, and respond to local interests and preferences.164 In other words, electoral incentives keep state officials surprisingly responsive to their popular constituency even when they are operating under federal direction. Federal administrators possess far fewer incentives to respond to local constituencies.165 Thus, where preemption and federal administration are the likely alternative to commandeering and coercive conditional spending, the latter two would be preferable from the standpoint of the constituency-relations model.166

## Politics

### Agenda---Core---2AC

#### 1. Thumpers---abortion and Afghanistan.

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

Congress’s long to-do list has only expanded over the break following the botched Afghanistan withdrawal and a Supreme Court decision allowing a Texas law that bans abortions after six weeks to remain in place.

Lawmakers, including Democrats, are vowing to grill administration officials over the Afghanistan exit, where the administration was caught off guard by the Taliban’s quick rise and overestimated both the Afghan government and military.

Though Democrats largely agree with Biden’s ultimate endgame, withdrawing U.S. military forces, the president has found little cover from Democratic lawmakers over his handling of the exit.

“The U.S. Senate Armed Services Committee should quickly begin investigating the rapid collapse of the Afghan government and forces after two decades of American investment of resources and troops, and why we were unable to better anticipate it,” Sen. Tammy Duckworth (D-Ill.) said in a statement.

Pelosi, meanwhile, added the abortion fight to the House agenda after the Supreme Court decision.

“Upon our return, the House will bring up Congresswoman Judy Chu’s Women’s Health Protection Act to enshrine into law reproductive health care for all women across America,” Pelosi said, referring to legislation that would codify Roe v. Wade.

The Senate Judiciary Committee has also vowed that it will hold a hearing on the Supreme Court’s “shadow docket,” which the justices have increasingly used to issue decisions on weighty cases on an emergency basis.

But the fight could also reignite Democratic tensions. The same bill has only 48 Democratic supporters in the Senate, where progressives are renewing their calls to nix the filibuster and expand the Supreme Court.

#### 3. No PC---low approval rating and Afghanistan.

Jennifer Oliver O'Connell, 9-10-2021, "Joe Biden Has Zero Political Capital, so Grandpa Stompy Foot Has to Work," redstate, https://redstate.com/jenniferoo/2021/09/10/joe-biden-has-zero-political-capital-so-grandpa-stompy-foot-has-to-work-n440971

You see, Joe Biden has no political capital left. Absolutely none. Zero, Zip, Nada.

Depending upon what poll you look at, his approval rating is hovering between 36 and 45 percent. After this stink bomb thrown into the manhole of the sewer that is Afghanistan, it’s doubtful it will improve.

#### 5. Thumper---Senate antitrust bill.

Benjamin Din, 8-12-2021, "Senators set stage for antitrust fight," POLITICO, https://www.politico.com/newsletters/morning-tech/2021/08/12/senators-set-stage-for-antitrust-fight-797122

SENATE SHARPENS ITS ANTITRUST FOCUS — The Senate is moving on its antitrust response, following the House Judiciary Committee’s approval of its own antitrust package. But senators are taking a more targeted approach that could make their bill easier to actually get to Biden’s desk.

Sen. Richard Blumenthal (D-Conn.) on Wednesday introduced the Open App Markets Act, as Leah reported for Pros. The new bill would target Apple and Google's "gatekeeper power" over the smartphone market, forcing the tech giants to allow developers to use alternative app stores and to tell consumers about where they can purchase software for a cheaper price online. Sens. Marsha Blackburn (R-Tenn.) and Klobuchar, who chairs the Senate Judiciary antitrust subcommittee, are cosponsors of the legislation.

— Not quite a companion bill: The Senate bill does have some overlap with a House bill introduced by Rep. David Cicilline (D-R.I.), who chairs the House Judiciary antitrust panel. However, Cicilline’s legislation is broader, applying to everything from app stores to advertising to logistics, and would ban companies from prioritizing their own products over their competitors’.

Companion legislation from the House is currently in the works. Senators are still working on companions for the House’s proposals, but those bills aren’t expected until later in the fall.

### Agenda---AT: Infrastructure/Reconciliation---2AC

#### 6. Won’t pass- fights and defections means Dems don’t have the votes

Mike Lillis, 9-16-2021, "Democrats brace for toughest stretch yet with Biden agenda," TheHill, https://thehill.com/homenews/house/572624-democrats-brace-for-toughest-stretch-yet-with-biden-agenda

House Democrats this week wrapped up the bulk of committee work on a $3.5 trillion package of social benefits and climate programs — a massive undertaking that advances what would be a legacy-defining domestic agenda for President Biden.

Now the harder part begins.

While 13 separate committees succeeded in drafting, massaging and ultimately approving the portions of the package under their jurisdiction, the process featured plenty of infighting between disparate factions over various provisions — differences that have created headaches for Democratic leaders and will need resolving before the legislation hits the floor.

Those clashes have threatened to sink a major cost-slashing drug benefit, risking liberal defections and potentially alienating moderates if deficit estimates swell as a result. A separate battle over tax benefits risks an erosion of support from a handful of Democrats in high-income regions — enough to bring the legislation to a halt.

The combination is raising new questions about whether House leaders have the votes to pass the package on the floor with a minuscule majority demanding virtual unanimity to overcome the communal opposition of Republicans.

And that’s all before the looming fight in the evenly split Senate, where Democrats can afford zero defections — and centrists and progressives have been sniping for months over the size and scope of the package.

#### 7. Dems will already miss deadlines for infrastructure, reconciliation

BURGESS EVERETT and MARIANNE LEVINE, 9-13-2021, "Democrats confront their Manchin and Sinema dilemma," Politico, https://www.politico.com/news/2021/09/13/democrats-confront-manchin-sinema-dilemma-511720

It’s now likely that Democrats will miss Senate Majority Leader Chuck Schumer’s Sept. 15 goal for committees to complete bill text for that budget reconciliation bill, which can evade a GOP filibuster and pass with a simple majority. And progressives’ hope to pass the social spending package by Sept. 27, the date Speaker Nancy Pelosi set for the House to take up the bipartisan infrastructure package, increasingly looks like a long shot.

#### 8. Debt ceiling thumps

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

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

### Agenda---AT: Infrastructure/Reconciliation---AT: Warming---2AC

#### 9. Infrastructure alone won’t solve climate

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

Across those paramount concerns, Biden’s bipartisan infrastructure proposal left out the entirety of the care proposal, offered nothing on immigration, and featured startlingly little on climate; a reconciliation bill was still almost two months out. And yet the reception featured no four-letter words and no accusations of cowardice. According to sources who were in the meeting, Sheyman was particularly obliging, raising his hand to personally congratulate the administration on the deal.

“This is the meeting for progressives and progressive advocacy organizations,” said one adviser close to the White House. “The bill doesn’t include a single one of his priorities, and yet the tone is incredibly civil, nobody is even saber-rattling.” Biden, meanwhile, was soon pledging not to veto the bipartisan package if it came to his desk without a reconciliation bill full of other Democratic climate priorities, threatening the absence of major environmental spending to come.

### Not Existential---1NC/2AC

#### Warming’s not existential---framing it as such undermines solvency.

Zeke Hausfather & Glen P. Peters 20. \*Director of climate and energy at the Breakthrough Institute in Oakland, California. \*\*Research director at the CICERO Center for International Climate Research in Oslo, Norway. "Emissions – the ‘business as usual’ story is misleading". Nature. 1-29-2020. https://www.nature.com/articles/d41586-020-00177-3

In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

## Economy DA

### Economy DA---Core---2AC

#### 2. Inequality turns the DA---worker suppression hurts growth, prices, and innovation.

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

The economic consequences of labor market power are analogous to those of product market power. Product market power has two wellknown effects. It redistributes from consumers to the firm: consumers must pay more for products, and the firm earns greater profits at their expense. And it creates waste or deadweight loss. Some consumers would be willing to pay the efficient, marginal cost price that the firm would have charged in a competitive market but are not willing to pay the higher price the monopolist chooses to charge.

Similarly, monopsony power has two effects. It redistributes from workers to employers by lowering wages. And it creates waste: some workers would have been willing to work for the employer if they had been paid their full marginal revenue product but will quit if they are paid the marked-down wage the monopsonist offers. This leads to increased unemployment or nonemployment as workers find prevailing wages unacceptable and exit the labor force or refuse to take available jobs. Economic output also declines.

Monopsony power creates other negative effects as well. First, to the extent that the degree of monopsony power differs across employers, it will also lead to misemployment: workers may be more productive at employer A, which has a lot of labor market power, than at employer B, which has a little. But B may offer higher wages because of its limited labor market power. The worker may thus choose to work at B, lowering the productivity of the economy. Misallocation may be particularly severe because of the two-sided matching problem. If matches between workers and firms generate specific benefits, monopsony can distort which firms match which workers, which will lower the allocative efficiency of the market.

Second, employers will often cut benefits, rather than cut wages, to take advantage of workers who are locked into the job. The firm has no need to retain these workers and thus may wastefully degrade conditions of work these “stuck” workers particularly value, instead catering only to the workers the firm is worried about losing.26

Third, monopsony raises prices for consumers. This may seem counterintuitive: won’t lower wages to workers be passed through to consumers as reduced prices? That argument is often made as a defense of monopsony power.

In fact, however, this argument is wrong. To see this, note that if firms employ fewer workers, they will produce less output, resulting in higher prices. The labor cost savings accrue to the employer itself (or its shareholders), not to the buyers of its goods. Those buyers will pay a price that is determined by the structure of the product market, not the labor market. So, for example, if the employer is also a monopolist in the product market, it will charge the buyers the monopoly price—which is determined by how much buyers are willing to pay. And if the product market is competitive, the employer will charge prices for its goods that are no higher than the competitive price—with its competitors taking up the slack as the employer itself will produce less given its small workforce. The technical explanation is that while the firm lowers wages to workers, the cost to the firm of hiring workers rises as the firm now considers the fact that, when it hires an additional worker, it also will pay its other workers more. When a monopsonist hires a single worker, it must increase wages for all its workers. (Recall that employers cannot easily wage-discriminate.)27 If this seems paradoxical, note that it is merely the flip side of a well-understood feature of monopolistic control of product markets: that a monopolist produces fewer products and charges a higher price for them than does a competitive firm. Monopoly and monopsony are two sides of the same coin, and both harm labor and product markets.

Fourth, and precisely for this reason, monopsony power reinforces and exacerbates monopoly power. In fact, both can be seen as two alternative ways for the owners of capital to squeeze workers and thus reduce the returns to productive work and the output of the economy. The markdown on wages caused by monopsony and the markup on prices caused by monopoly are akin to taxes: payments that ordinary people must pay in order to go about their daily life as producers and consumers. However, the payments go not to governments to fund programs, but to firms and, ultimately, investors. And the payments do not spur investment and raise economic growth because they depend in the first place on the willingness of managers to leave capital idle to obtain market power, while driving workers out of the workforce and onto taxpayer-financed relief programs.

#### 3. Labor markets aren’t competitive---suppresses wages.

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

These events coincided with the release of several academic papers that document statistically the **pervasiveness of labor monopsony** in the United States.10 A labor monopsony exists when lack of competition in the labor market enables employers to **suppress the wages of their workers.**11 At one time, economists assumed that labor markets were highly competitive.12 If one imagines sandwich workers in a big city, for example, the immediate image that comes to mind is that of someone who could easily find another job if fired. That person could work at another restaurant, or a coffee shop, or in a warehouse, or as an Uber driver. Similarly, a lawyer can easily quit her law firm and join another. But the new research revealed that these assumptions were faulty.13 In fact, **most labor markets are not highly competitive.**14 Most labor markets are rural or semi-rural. Only a handful of employers cater to a thin population spread out over a large area.15 Even in densely populated areas, various frictions, including noncompetition agreements, **prevent workers** from easily finding new jobs.16 Taking advantage of these frictions, employers can pay **below-competitive wages** without worrying that they will lose employees to competitors. Some commentators argue that the **high degree of labor monopsony may explain stagnant wages**.17

### Economy Low---Stock Markets

#### 5. Stock markets are scared now---inflation.

Silvia Amaro 9-13. Correspondent for CNBC in London, covering European politics and financial markets. “Investors are expecting a pullback for stocks before year-end: Deutsche survey.” CNBC. https://www.cnbc.com/2021/09/13/investors-see-a-pullback-for-stocks-before-year-end-deutsche-bank-survey.html

\*Chart in the original article omitted

LONDON — Most investors are expecting a pullback in stock markets of 5% to 10% before the end of the year, according to a survey from Deutsche Bank.

Its monthly poll, conducted in early September and covering over 550 market professionals worldwide, showed that 58% of respondents are expecting a retreat of 5% to 10%, while 1 in 10 respondents expect a correction higher than 10%.

By contrast, only 31% said there would no pullback. Last month, Citi also said the stock market was vulnerable to a 10% correction, off the back of a rally for speculative tech names.

The S&P 500 is up about 18% in 2021 and the tech-focused Nasdaq is about 19% higher, while the European Stoxx 600 has risen 17%.

These performances have largely been supported by an improvement in the health situation in many Western economies since the start of the year. However, there are concerns that the economic picture will deteriorate in coming months.

The United States has experienced a growing number of Covid-19 infections, which has forced companies to delay their return-to-office schedules. In addition, there are supply shortages with consumers in the U.K., for instance, seeing empty shelves in grocery stories. And there are questions about the future of inflation and the pandemic-era stimulus polices that central banks have implemented.

[Chart omitted]

Respondents in the survey said the Covid pandemic is still their top concern, and higher-than-expected inflation came second. One of the reasons behind this is if consumer prices were to stay high for a prolonged period, this would trigger central banks to ease their stimulus at a faster pace, which would impact financial markets.

The survey showed inflation expectations for the United States at around 2.6% over the next five years, with a large majority of investors seeing consumer prices slightly overshooting the Federal Reserve’s target.

Fed Chair Jerome Powell said in August that the central bank would allow inflation to run higher than the standard 2% target before increasing interest rates. More recently, Powell said the central bank could start to lift its Covid-related stimulus measures before the end of the year.

#### 6. Their ev is super old---doesn’t assume Lina Khan getting nominated---that should thump.

### AT: Econ Decline Impact

#### 8. No econ decline impact.

**Walt 20** [Stephen M. Walt is the Robert and Renée Belfer professor of international relations at Harvard University. “Will a Global Depression Trigger Another World War?”, May 13th, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### Countries will exercise restraint.

Christina L. Davis & Krzysztof J. Pelc 17. \*Professor of Politics and International Affairs at Princeton. \*\*Associate Professor of Political Science at McGill University. “Cooperation in Hard Times: Self-restraint of Trade Protection.” *Journal of Conflict Resolution* 61(2): 398-429. Emory Libraries.

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

# 1AR

## States

### 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

#### 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.

## Politics

### Agenda---Thumpers---1AR

#### Literally everyone is mad at Biden.

Catie Edmondson, 8-16-2021, "Lawmakers Unite in Bipartisan Fury Over Afghanistan Withdrawal," New York Times, https://www.nytimes.com/2021/08/16/us/politics/afghanistan-withdrawal-congress.html

Moderate Democrats are furious at the Biden administration for what they see as terrible planning for the evacuation of Americans and their allies. Liberal Democrats who have long sought to end military engagements around the world grumble that the images out of Kabul are damaging their cause.

And Republicans who months ago cheered for former President Donald J. Trump’s even faster timetable to end U.S. military involvement in the nation’s longest war have shoved their previous encouragements aside to accuse President Biden of humiliating the nation.

If Mr. Biden hoped to find cover from politicians in both parties who had reached a broad consensus around withdrawal, he is finding little so far.

Confronted with images of panic-stricken Afghans mobbing Kabul’s airport and inundated with requests from Afghans seeking refuge, some Democrats by Monday were openly attacking their president’s performance.

#### Congress is intervening in agency antitrust enforcement.

Danielle Abril 20. Tech reporter for Fortune. “Google, Amazon, Apple, and Facebook likely to face heavy ‘tech bashing’ at congressional hearing”. Fortune. 7/28/20. https://fortune.com/2020/07/28/google-amazon-apple-facebook-antitrust-hearing-congress-what-to-expect-mark-zuckerberg-jeff-bezos-tim-cook-sundar-pichai/

Google, [Amazon](https://fortune.com/company/amazon-com), [Apple](https://fortune.com/company/apple), and [Facebook](https://fortune.com/company/facebook) CEOs are expected to face a heated line of questions from members of the House Judiciary Antitrust Subcommittee on Wednesday. The virtual hearing, which was [postponed by a couple of days](https://www.theverge.com/2020/7/24/21337052/tech-ceo-hearing-postpone-john-lewis-facebook-google-apple-amazon) for Congress members to pay their respects to [Rep. John Lewis](https://fortune.com/2020/07/18/john-lewis-obit-civil-rights-congress-dies-at-80/), will include testimony from Facebook’s Mark Zuckerberg, Amazon’s Jeff Bezos, Apple’s Tim Cook, and Sundar Pichai of Alphabet, which owns [Google](https://fortune.com/company/alphabet), and aims to explore the dominance of tech giants. Antitrust experts expect to witness two things during the hearing: critical statements and questions from Congress members across party lines, and defenses from the tech CEOs about why their services and practices do more good than bad. “You’ll see a lot of tech bashing from both sides,” said Douglas Melamed, Stanford Law School professor who previously served as acting assistant attorney general for the U.S. Department of Justice’s antitrust division. But the “heavy lifting will be in [public relations], not in economic analysis.” The virtual hearing is the first time the CEOs of four of the largest tech companies will provide testimony to Congress at the same time. It also comes as the [Department of Justice and Federal Trade Commission are investigating](https://fortune.com/2019/06/03/u-s-regulators-probes-big-tech/) whether the companies have violated any antitrust laws. Meanwhile, the companies continue to face rising public and government scrutiny over privacy concerns, the dissemination of hate speech and violence, and their aggressive competitive practices. The hearing is expected to highlight three schools of thought, according to experts: Democrats will argue that Big Tech has become too big and powerful and thus needs to be reined in. Republicans will also speak to the harms of Big Tech but with a slight nuance in favor of creating new regulation specifically for the tech companies rather than changing overarching antitrust laws. A third group will push the message that these are great American businesses that provide needed services at low costs to consumers. Melamed expects the hearing to give the public a better idea of how inclined Congress is to pass new regulation. It also could give viewers an idea of what future legislative proposals may look like. “You’ll learn that by the nature of their questions,” he said. Previous congressional hearings with [Facebook’s CEO Mark Zuckerberg](https://fortune.com/2018/04/11/facebook-mark-zuckerberg-congress-hearing-data/) and [Alphabet’s CEO Sundar Pichai](https://fortune.com/2018/12/11/google-ceo-sundar-pichai-congressional-hearing/) revealed Congress members’ lack of knowledge about how these big tech companies work. And while experts say there will likely be more of that in Wednesday's hearing, there will also be direct questions related to specific purchases, growth strategies, and monetization efforts.

### Budget---1AR

#### Won’t solve climate- scaled back for Manchin approval

Steven Mufson and Tony Romm, 9-13-2021, "As the largest-ever U.S. climate bill inches forward, a lobbying frenzy ensues," https://www.washingtonpost.com/climate-environment/2021/09/13/budget-reconciliation-bill-climate/

The budget bill’s most ambitious climate spending plans still face major hurdles within the president’s own party, including from Sen. Joe Manchin III (W.Va.), a pivotal vote from a state with a flagging coal industry. This month, Manchin said he would not support a $3.5 trillion spending bill, and he has privately signaled to his Democratic peers that he may support only half as much in spending and tax increases.

Opposition from Manchin, who chairs the Senate Energy and Natural Resources Committee, would set up a conflict with the Democrats’ more liberal wing and could force the party to make significant cuts to the package’s climate provisions.

#### Parliamentarian can strip climate measures

Steven Mufson and Tony Romm, 9-13-2021, "As the largest-ever U.S. climate bill inches forward, a lobbying frenzy ensues," https://www.washingtonpost.com/climate-environment/2021/09/13/budget-reconciliation-bill-climate/

But the moderates may not be Democrats’ sole obstacle, since the Senate parliamentarian might rule part of the budget bill out of order on procedural grounds. The clean energy plan for utilities is particularly vulnerable.