# Wiki Doc---Round 3---NU 21

# 1AC

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### Plan---1AC

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

### Adv 1---1AC

#### Advantage 1 is Inequality.

#### Labor monopsony causes income inequality---revising antitrust to account for labor market power 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 in underemployment 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 by 22%.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.

#### Antitrust is key---it permits labor market concentration.

Sandeep Vaheesan 18. Legal director at the Open Markets Institute. “How Contemporary Antitrust Robs Workers of Power”. LPE Project. 7-19-2018. <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 lawtoday 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 international engagement and soft power.

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.

#### Soft power solves extinction.

Joseph S. Nye 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.

#### Declining worker welfare causes neo-isolationist nativism---the plan future-proofs internationalism.

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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.”

#### International engagement solves extinction.

Yuval Noah Harari 18. Professor of History at Hebrew University of Jerusalem. “We need a post-liberal order now”. The Economist. <https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now>

For several generations, the world has been governed by what today we call “the global liberal order”. Behind these lofty words is the idea that all humans share some core experiences, values and interests, and that no human group is inherently superior to all others. Cooperation is therefore more sensible than conflict. All humans should work together to protect their common values and advance their common interests. And the best way to foster such cooperation is to ease the movement of ideas, goods, money and people across the globe. Though the global liberal order has many faults and problems, it has proved superior to all alternatives. The liberal world of the early 21st century is more prosperous, healthy and peaceful than ever before. For the first time in human history, starvation kills fewer people than obesity; plagues kill fewer people than old age; and violence kills fewer people than accidents. When I was six months old I didn’t die in an epidemic, thanks to medicines discovered by foreign scientists in distant lands. When I was three I didn’t starve to death, thanks to wheat grown by foreign farmers thousands of kilometers away. And when I was eleven I wasn’t obliterated in a nuclear war, thanks to agreements signed by foreign leaders on the other side of the planet. If you think we should go back to some pre-liberal golden age, please name the year in which humankind was in better shape than in the early 21st century. Was it 1918? 1718? 1218? Nevertheless, people all over the world are now losing faith in the liberal order. Nationalist and religious views that privilege one human group over all others are back in vogue. Governments are increasingly restricting the flow of ideas, goods, money and people. Walls are popping up everywhere, both on the ground and in cyberspace. Immigration is out, tariffs are in. If the liberal order is collapsing, what new kind of global order might replace it? So far, those who challenge the liberal order do so mainly on a national level. They have many ideas about how to advance the interests of their particular country, but they don’t have a viable vision for how the world as a whole should function. For example, Russian nationalism can be a reasonable guide for running the affairs of Russia, but Russian nationalism has no plan for the rest of humanity. Unless, of course, nationalism morphs into imperialism, and calls for one nation to conquer and rule the entire world. A century ago, several nationalist movements indeed harboured such imperialist fantasies. Today’s nationalists, whether in Russia, Turkey, Italy or China, so far refrain from advocating global conquest. In place of violently establishing a global empire, some nationalists such as Steve Bannon, Viktor Orban, the Northern League in Italy and the British Brexiteers dream about a peaceful “Nationalist International”. They argue that all nations today face the same enemies. The bogeymen of globalism, multiculturalism and immigration are threatening to destroy the traditions and identities of all nations. Therefore nationalists across the world should make common cause in opposing these global forces. Hungarians, Italians, Turks and Israelis should build walls, erect fences and slow down the movement of people, goods, money and ideas. The world will then be divided into distinct nation-states, each with its own sacred identity and traditions. Based on mutual respect for these differing identities, all nation-states could cooperate and trade peacefully with one another. Hungary will be Hungarian, Turkey will be Turkish, Israel will be Israeli, and everyone will know who they are and what is their proper place in the world. It will be a world without immigration, without universal values, without multiculturalism, and without a global elite—but with peaceful international relations and some trade. In a word, the “Nationalist International” envisions the world as a network of walled-but-friendly fortresses. Many people would think this is quite a reasonable vision. Why isn’t it a viable alternative to the liberal order? Two things should be noted about it. First, it is still a comparatively liberal vision. It assumes that no human group is superior to all others, that no nation should dominate its peers, and that international cooperation is better than conflict. In fact, liberalism and nationalism were originally closely aligned with one another. The 19th century liberal nationalists, such as Giuseppe Garibaldi and Giuseppe Mazzini in Italy, and Adam Mickiewicz in Poland, dreamt about precisely such an international liberal order of peacefully-coexisting nations. The second thing to note about this vision of friendly fortresses is that it has been tried—and it failed spectacularly. All attempts to divide the world into clear-cut nations have so far resulted in war and genocide. When the heirs of Garibaldi, Mazzini and Mickiewicz managed to overthrow the multi-ethnic Habsburg Empire, it proved impossible to find a clear line dividing Italians from Slovenes or Poles from Ukrainians. This had set the stage for the second world war. The key problem with the network of fortresses is that each national fortress wants a bit more land, security and prosperity for itself at the expense of the neighbors, and without the help of universal values and global organisations, rival fortresses cannot agree on any common rules. Walled fortresses are seldom friendly. But if you happen to live inside a particularly strong fortress, such as America or Russia, why should you care? Some nationalists indeed adopt a more extreme isolationist position. They don’t believe in either a global empire or in a global network of fortresses. Instead, they deny the necessity of any global order whatsoever. “Our fortress should just raise the drawbridges,” they say, “and the rest of the world can go to hell. We should refuse entry to foreign people, foreign ideas and foreign goods, and as long as our walls are stout and the guards are loyal, who cares what happens to the foreigners?” Such extreme isolationism, however, is completely divorced from economic realities. Without a global trade network, all existing national economies will collapse—including that of North Korea. Many countries will not be able even to feed themselves without imports, and prices of almost all products will skyrocket. The made-in-China shirt I am wearing cost me about $5. If it had been produced by Israeli workers from Israeli-grown cotton using Israeli-made machines powered by non-existing Israeli oil, it may well have cost ten times as much. Nationalist leaders from Donald Trump to Vladimir Putin may therefore heap abuse on the global trade network, but none thinks seriously of taking their country completely out of that network. And we cannot have a global trade network without some global order that sets the rules of the game. Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind. An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.” Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”. The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans. Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world. This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI. In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

#### 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.

#### The plan protects workers and reduces labor market concentration.

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

#### 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.

#### Worker welfare lets labor win---anything else permits exploitation and bans collective bargaining.

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

Introduction

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

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

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

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

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

#### Antitrust must prioritize workers---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

### Adv 2---1AC

#### Advantage 2 is Modeling.

#### Global competition systems use the consumer welfare standard.

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”.

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

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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 solutionsfor 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 issueswhich 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.

#### The Philippines adopts US antitrust policy---they currently use consumer welfare---implementing worker welfare is key to their economy.

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.

#### Absent worker welfare, economic stagnation is inevitable.

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.

#### That causes 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.

#### The terrorism-piracy nexus causes a nuclear attack.

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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.

#### That causes extinction.

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

#### The plan solves---it’s modeled globally.

David J. Gerber 13. Teaches antitrust law, comparative law and more specialized seminars such as international and comparative competition law. He has been a member of the Chicago-Kent faculty since 1982. After graduating from the University of Chicago Law School, Professor Gerber practiced law in New York City and then spent several years working in a German law firm and in several universities in Europe. “U.S. ANTITRUST: FROM SHOT IN THE DARK TO GLOBAL LEADERSHIP” Then & Now: Stories of Law and Progress. 2013.

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.

#### The US is empirically successful at exporting aggressive antitrust policy.

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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.

### Adv 3---1AC

#### Advantage 3 is Democracy.

#### Congressional inaction on antitrust law shifts power to less democratic institutions.

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

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

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

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

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

#### That collapses court legitimacy and 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 disregardfor 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.

#### The rule of law prevents societal collapse.

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

#### Judicial activism 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---the plan 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 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.

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

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---it reverses incorrect court judgement that distorted 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.

# 2AC

## CP

### Executive CP---2AC

#### Perm do the CP---the FTC expands antitrust laws.

Michael Gleason et al 7-15-21. Gleason is a member of the American Bar Association's Section of Antitrust Law, serves as a vice chair of the ABA Section of Antitrust Law's Mergers & Acquisitions Committee, and is a partner at Jones Day. Lin Kahn is a partner at Jones Day and served as lead litigation and trial counsel at the FTC. J. Bruce McDonald is a partner at Jones Day, served as deputy assistant attorney general with the United States Department of Justice, served as chair of the State Bar of Texas' Antitrust & Business Litigation Section, as chair of the ABA Antitrust Section's Transportation & Energy Committee, and chair of the Houston Bar Association's Antitrust Section, and as adjunct professor at the University of Houston Law Center. Craig Waldman co-chairs Jones Day's global Antitrust & Competition Law Practice, served as an attorney in the Federal Trade Commission's Mergers I division, served as an adjunct professor at both Berkeley and Hastings Law Schools, has lectured at Stanford Business School, has served in numerous roles within ABA Antitrust Leadership, and has served on the board of directors of Global Strategies. “FTC Signals Aggressive Antitrust Policy as Part of Government Pro-Enforcement Agenda”. JD Supra. https://www.jdsupra.com/legalnews/ftc-signals-aggressive-antitrust-policy-7983021/

The Result: A majority of the Commission, along party lines, voted to expand its interpretation of the agency's power to combat anticompetitive conduct and, at the same time, contract procedural safeguards. Specifically, the FTC voted to rescind a policy that defined limits to challenge "unfair competition" violations under FTC Act Section 5. The FTC also voted to remove certain restrictions on its rulemaking and to empower individual Commissioners to serve subpoenas in certain industries, enabling a single Commissioner, rather than a majority of the Commission, to launch an industrywide investigation. Looking Ahead: The measures can be expected to result in increased FTC activity in the form of more rulemaking, investigations, and enforcement. The changes are consistent with recent proposals by the administration, legislators, and other policymakers to expand the U.S. antitrust laws to target perceived problems with industry concentration and dominant companies. Nevertheless, the goal of increased enforcement may be hindered by the well-established framework for antitrust analysis adopted by federal courts, the agency's current merger guidelines, and career staff.

#### Congress key to predictability---the counterplans constitutional objections cause confusions.

Derrian Smith 19. J.D., 2019, Indiana University Maurer School of Law; B.A., 2016, Indiana University - Indianapolis. "Taming Sherman's Wilderness." Indiana Law Journal, vol. 94, no. 3, Summer 2019, p. 1223-1246. HeinOnline.

CONCLUSION

The Sherman Act, by its vague and sweeping language, is a broad delegation of authority to the Supreme Court. Congress sent us into the wilderness-law students and generalist judges alike. In light of swelling desire for the antitrust laws to be more effective against modern-day competition foes, Congress should update the Sherman Act. The common-law approach has not achieved the stability one would expect of a statute levying hefty criminal sanctions, and the Court appears to approximate agency rulemaking on an increasingly frequent basis. Delegating rulemaking authority to an antitrust agency may be a viable solution. But there are some draw backs-namely constitutional objections to which the Sherman Act may be vulnerable, especially if an agency delegation were not accompanied by some level of additional statutory clarity. Even if the agency solution proves unworkable, Congress should address head-on the growing need for clarity, predictability, and stability, which the Sherman Act significantly fails to provide.

#### Uncertainty and delay.

Alexander Paul Okuliar et al. 21. Morrison & Foerster LLP. "FTC Lays Groundwork For Rulemakings: Are New Substantive Competition Rules Coming?". No Publication. 3-25-2021. https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1067906/ftc-lays-groundwork-for-rulemakings-are-new-substantive-competition-rules-coming

The FTC's foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC's authority, the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled. Substantive FTC competition rules could also create potential divergence in enforcement policy or activity between the DOJ and FTC brought about by the new rules.

#### Courts strike down the CP.

Eric Posner 21. “Biden’s antitrust agenda will face many judicial obstacles” Khaleej Times. 07-26-21. <https://www.khaleejtimes.com/opinion-editorial/bidens-antitrust-agenda-will-face-many-judicial-obstacles>

US President Joe Biden’s new executive order on ‘promoting competition in the American economy’ is more significant for what it says than for what it does. In fact, the order doesn’t actually order anything. Rather, it ‘**encourages’ federal agencies** with authority over market competition to use their **existing legal powers** to do something about the growing problem of monopoly and cartelisation in the United States. In some cases, the relevant agencies are asked merely to ‘consider’ ramping up enforcement; in others, they are directed to issue regulations, but the content of those regulations remains largely up to them. Nonetheless, it would be a mistake to dismiss the order’s tentative language as mere rhetoric. Antitrust is the main body of law governing market competition in the US, and it has been the object of sustained attack by business interests and conservative intellectuals for more than 50 years. Biden is the first president since Harry Truman to take a strong public anti-monopoly stand, and he has backed it up by appointing ardent anti-monopoly advocates to his government. The executive order is ambitious in its scope and style. In strongly worded passages, it accuses businesses of monopolistic and unfair practices in major industries, including technology, agriculture, health care, and telecommunications. It laments the decline of government antitrust enforcement, and identifies numerous harms that have resulted — including economic stagnation and rising inequality. The order also establishes a new bureaucratic organisation in the White House to lead the anti-monopoly effort. Demanding a ‘whole-of-government’ approach, it calls on the vast resources of numerous agencies, and not just the two that traditionally oversee antitrust — the Department of Justice (DOJ) and the Federal Trade Commission (FTC). Still, the Biden administration’s antitrust agenda will **face significant judicial obstacles**. Over the past 40 years, an **increasingly business-friendly Supreme Court** has gutted antitrust law. In **ruling after ruling**, it has **weakened the standards** used to evaluate anti-competitive behaviour; **raised the burden** of bringing an antitrust case; limited the types of antitrust victims who are allowed to bring cases; allowed businesses to use arbitration clauses to protect themselves from class action lawsuits; and much else. On top of that, the Supreme Court has disseminated throughout the judiciary a **generalised suspicion of antitrust claims.** Judges at all levels have absorbed an academic scepticism about antitrust law that is now 30 years out of date. Accordingly, business plaintiffs are usually seen as **sore losers** who have resorted to the law because they were beaten in the marketplace. Consumer cases are attributed to the machinations of trial lawyers. The pretexts businesses offer for their anti-competitive practices are **swallowed whole.** So, while Biden is right that ‘federal government inaction’ is partly to blame for the decline in antitrust enforcement, there is **little that his (or any) administration can do** unless it has the courts on its side. This probably accounts for the order’s careful language. Agencies like the DOJ and the FTC would surely like to enforce antitrust laws more vigorously than in the past, but they are **not going to commit resources** to bringing cases that will fail in court.

### States CP---2AC

#### Can’t solve any advantage---the CP gets pre-empted under the NLRA.

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.

#### Federal antitrust laws pre-empt the CP.

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Part I.B, supra, discussed antitrust liability for unilateral worker collective action. In addition, any regulatory scheme that aims to address collective action by such workers in anything but a purely punitive manner, or aims to provide for minimum working standards, will also come up against the outer limits imposed by antitrust. As the organizing efforts of freelancers, independent contractors, and gig economy workers continue to gain momentum, we can expect to see such proposed schemes. Members of the New York City Council have recently stated that they are currently developing this type of regulatory scheme, prompted by the efforts of the Freelancers Union and other organizing groups.72 The City of Seattle recently enacted an ordinance granting collective bargaining rights to drivers for taxicab, limo, and “transportation network companies” (encompassing Uber, Lyft and other companies in the on-demand sector) who are classified as independent contractors rather than employees.73 Local regulation, as such schemes are likely to be, will probably face federal preemption lawsuits not only under the “NLRA,”74 but also under antitrust.75

#### Courts pre-empt the CP by invoking 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

#### The CP gets pre-empted under the Lanham Act.

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While the high-stakes battle over the NLRA’s joint-employer standard almost revolutionized upstream firms’ obligations to downstream franchisee employees, franchisors have raised Lanham Act brand defenses to other federal and state work law obligations. Franchisors like Jimmy John’s have successfully asserted such defenses in FLSA wage-and hour litigation to immunize themselves from joint-employer liability.258 Under both state and federal anti-discrimination law, franchisors like Domino’s Pizza and Buffalo Wild Wings have successfully asserted such brand defenses to immunize upstream franchisors from jointemployer liability.259 And most recently, the IFA has claimed that the Lanham Act preempts even state law expansions of “employee” and “employer” status, 260 a significant new step because it threatens to derail innovative state law efforts to expand worker protections above federal baselines.261

## K

### Cap K---2AC

#### Cap solves environmental damage and is sustainable.

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The role that technology plays in reducing humanity’s dependence on nature explains this paradox. Human technologies, from those that first enabled agriculture to replace hunting and gathering, to those that drive today’s globalized economy, have made humans less reliant upon the many ecosystems that once provided their only sustenance, even as those same ecosystems have often been left deeply damaged.

Despite frequent assertions starting in the 1970s of fundamental “limits to growth,” there is still remarkably little evidence that human population and economic expansion will outstrip the capacity to grow food or procure critical material resources in the foreseeable future.

To the degree to which there are fixed physical boundaries to human consumption, they are so theoretical as to be functionally irrelevant. The amount of solar radiation that hits the Earth, for instance, is ultimately finite but represents no meaningful constraint upon human endeavors. Human civilization can flourish for centuries and millennia on energy delivered from a closed uranium or thorium fuel cycle, or from hydrogen-deuterium fusion. With proper management, humans are at no risk of lacking sufficient agricultural land for food. Given plentiful land and unlimited energy, substitutes for other material inputs to human well-being can easily be found if those inputs become scarce or expensive.

There remain, however, serious long-term environmental threats to human well-being, such as anthropogenic climate change, stratospheric ozone depletion, and ocean acidification. While these risks are difficult to quantify, the evidence is clear today that they could cause significant risk of catastrophic impacts on societies and ecosystems. Even gradual, non-catastrophic outcomes associated with these threats are likely to result in significant human and economic costs as well as rising ecological losses.

Much of the world’s population still suffers from more-immediate local environmental health risks. Indoor and outdoor air pollution continue to bring premature death and illness to millions annually. Water pollution and water-borne illness due to pollution and degradation of watersheds cause similar suffering.

2.

Even as human environmental impacts continue to grow in the aggregate, a range of long-term trends are today driving significant decoupling of human well-being from environmental impacts.

Decoupling occurs in both relative and absolute terms. Relative decoupling means that human environmental impacts rise at a slower rate than overall economic growth. Thus, for each unit of economic output, less environmental impact (e.g., deforestation, defaunation, pollution) results. Overall impacts may still increase, just at a slower rate than would otherwise be the case. Absolute decoupling occurs when total environmental impacts — impacts in the aggregate — peak and begin to decline, even as the economy continues to grow.

Decoupling can be driven by both technological and demographic trends and usually results from a combination of the two.

The growth rate of the human population has already peaked. Today’s population growth rate is one percent per year, down from its high point of 2.1 percent in the 1970s. Fertility rates in countries containing more than half of the global population are now below replacement level. Population growth today is primarily driven by longer life spans and lower infant mortality, not by rising fertility rates. Given current trends, it is very possible that the size of the human population will peak this century and then start to decline.

Trends in population are inextricably linked to other demographic and economic dynamics. For the first time in human history, over half the global population lives in cities. By 2050, 70 percent are expected to dwell in cities, a number that could rise to 80 percent or more by the century’s end. Cities are characterized by both dense populations and low fertility rates.

Cities occupy just 1 to 3 percent of the Earth’s surface and yet are home to nearly four billion people. As such, cities both drive and symbolize the decoupling of humanity from nature, performing far better than rural economies in providing efficiently for material needs while reducing environmental impacts.

The growth of cities along with the economic and ecological benefits that come with them are inseparable from improvements in agricultural productivity. As agriculture has become more land and labor efficient, rural populations have left the countryside for the cities. Roughly half the US population worked the land in 1880. Today, less than 2 percent does.

As human lives have been liberated from hard agricultural labor, enormous human resources have been freed up for other endeavors. Cities, as people know them today, could not exist without radical changes in farming. In contrast, modernization is not possible in a subsistence agrarian economy.

These improvements have resulted not only in lower labor requirements per unit of agricultural output but also in lower land requirements. This is not a new trend: rising harvest yields have for millennia reduced the amount of land required to feed the average person. The average per-capita use of land today is vastly lower than it was 5,000 years ago, despite the fact that modern people enjoy a far richer diet. Thanks to technological improvements in agriculture, during the half-century starting in the mid-1960s, the amount of land required for growing crops and animal feed for the average person declined by one-half.

Agricultural intensification, along with the move away from the use of wood as fuel, has allowed many parts of the world to experience net reforestation. About 80 percent of New England is today forested, compared with about 50 percent at the end of the 19th century. Over the past 20 years, the amount of land dedicated to production forest worldwide declined by 50 million hectares, an area the size of France. The “forest transition” from net deforestation to net reforestation seems to be as resilient a feature of development as the demographic transition that reduces human birth rates as poverty declines.

Human use of many other resources is similarly peaking. The amount of water needed for the average diet has declined by nearly 25 percent over the past half-century. Nitrogen pollution continues to cause eutrophication and large dead zones in places like the Gulf of Mexico. While the total amount of nitrogen pollution is rising, the amount used per unit of production has declined significantly in developed nations.

Indeed, in contradiction to the often-expressed fear of infinite growth colliding with a finite planet, demand for many material goods may be saturating as societies grow wealthier. Meat consumption, for instance, has peaked in many wealthy nations and has shifted away from beef toward protein sources that are less land intensive.

As demand for material goods is met, developed economies see higher levels of spending directed to materially less-intensive service and knowledge sectors, which account for an increasing share of economic activity. This dynamic might be even more pronounced in today’s developing economies, which may benefit from being late adopters of resource-efficient technologies.

Taken together, these trends mean that the total human impact on the environment, including land-use change, overexploitation, and pollution, can peak and decline this century. By understanding and promoting these emergent processes, humans have the opportunity to re-wild and re-green the Earth — even as developing countries achieve modern living standards, and material poverty ends.

#### We’re past tipping points---only tech solves---the alt is dictatorship.

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Today’s best-case ecological scenario was a horror story just three decades ago. In 1993, Bill Clinton declared that global warming presented such a profound threat to civilization that the U.S. would have to bring its “emissions of greenhouse gases to their 1990 levels by the year 2000.” Instead, we waited until 2020 to do so; in the interim, humanity burned more carbon than it had since the advent of agriculture. Now, it will take a historically unprecedented, worldwide economic transformation to freeze warming at “only” 2 degrees — a level of temperature rise that will turn “once in a century” storms into annual events, drown entire island nations, and render major cities in the Middle East uninhabitable in summertime (at least for those whose lifestyles involve “walking outdoors without dying of heatstroke”). This is what passes for a utopian vision in 2021. If we confine ourselves to mere optimism — and assume that every Paris Agreement signatory meets its current pledged target for decarbonization — then warming will hit 2.4 degrees by century’s end.

The reality of our ecological predicament invites denial of our political one. Put simply, it is hard to reconcile the scale of the climate crisis with the limits of contemporary American politics. Delusions rush in to fill the gap. Among these is the fantasy of national autonomy; the notion that the United States can save the planet or destroy it, depending on the precise timeline of its domestic decarbonization. A rapid energy transition in the U.S. is a vital cause, not least for its potential to expedite similar transformations abroad. But the battle for a sustainable planet will be won or lost in the developing world. Although American consumption played a central role in the history of the climate crisis, it is peripheral to the planet’s future: Over the coming century, U.S. emissions are expected to account for only 5 percent of the global total.

There is also the delusion of “de-growth’s” viability. The fact that there is no plausible path for global economic expansion that won’t entail climate-induced death and displacement has led some environmentalists to insist on global stagnation. Yet there is neither a mass constituency for this project, nor any reason to believe that there will be any time soon. Freeze the status-quo economy in amber, and you’ll condemn nearly half of humanity to permanent poverty. Divide existing GDP into perfectly even slices, and every person on the planet will live on about $5,500 a year. American voters may express a generalized concern about the climate in surveys, but they don’t seem willing to accept even a modest rise in gas prices — let alone a total collapse in living standards — to address the issue. Meanwhile, any Chinese or Indian leader who attempted to stymy income growth in the name of sustainability would be ousted in short order. It’s conceivable that one could radically reorder advanced economies in a manner that enabled living standards to rise even as GDP fell; Americans might well find themselves happier and more secure in an ultra-low-carbon communal economy in which individual car ownership is heavily restricted, and housing, healthcare, and myriad low-carbon leisure activities are social rights. But nothing short of an absolute dictatorship could affect such a transformation at the necessary speed. And the specter of eco-Bolshevism does not haunt the Global North. Humanity is going to find a way to get rich sustainably, or die trying.

Thus, the chasm between the ecologically necessary and the politically possible can only be bridged by technological advance. And on that front, the U.S. actually has the resources to make a decisive contribution to global decarbonization — and some political will to leverage those resources. Unfortunately, due to some combination of fiscal superstitions and misplaced priorities, the Biden administration’s proposed investments in green innovation remain paltry. An American Jobs Plan with much higher funding for green R&D is both imminently winnable and environmentally imperative. U.S. climate hawks should make securing such legislation a top priority.

The choice before us is techno-optimism or barbarism.

If governments are forced to choose between increasing income growth in the present, and mitigating temperature rise in the future, they are going to pick the former. We’ll get cheap, lab-grown Kobe beef before we get a U.S. Senate willing to tax meat, and steel plants powered by “green hydrogen” before we get anarcho-primitivism with Chinese characteristics.

The question is whether we’ll get such breakthroughs before it’s too late.

Techno-optimism has its hazards, but the progress we’ve made toward decarbonization has come largely through technological innovation. When India canceled plans to construct 14 gigawatts of new coal-fired power stations in 2019, it did not do so in deference to international pressure or domestic environmental movements, but rather to the cost-competitiveness of solar energy. The same story holds across Asia’s developing countries: Thanks to a ninefold reduction in the cost of solar energy over the past decade, the number of new coal plants slated for construction in the region has fallen by 80 percent. Meanwhile, the road to an electric-car revolution was cleared by a collapse in the cost of lithium batteries, the challenge of powering cities with solar energy on cloudy days was eased by a 70 percent drop in the price of utility-scale batteries, and wind power grew 40 percent cheaper. Our species remains lackluster at solidarity and self-government, but we’ve got a real knack for building cool shit.

The technological progress of the past decade was not sufficient to compensate for tepid climate policy. But real techno-utopianism has never been tried: As of 2019, global spending on clean energy R&D totaled $22 billion a year, or 3 percent of the Pentagon’s annual budget. Increasing spending on such research — while expediting cost-reductions in existing technologies by deploying them en masse — should be twin priorities of American climate policy.

The preconditions for green industrialization can be made in America.

The United States has more fiscal capacity and better-financed research universities than any nation on the planet. And, for all the pathologies of our politics, public investment in green tech inspires far weaker opposition than many less-indispensable climate policies. In fact, late last year, with Republicans controlling the Senate and Donald Trump in the White House, the U.S. increased funding for zero-emission technology R&D by $35 billion. America does not have sovereignty over enough humans to save the planet by slashing our domestic emissions. But we just might have the resources and political economy necessary to help the developing world save us all.

#### Regulated cap solves everything better.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Cap solves war.

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Countries with liberal political and economic systems rarely use military force against each other. This anomalous peace has been most prominently attributed to the ‘democratic peace’ – the apparent tendency for democratic countries to avoid militarized conflict with each other (Maoz & Russett, 1993; Ray, 1995; Dafoe, Oneal & Russett, 2013). More recently, however, scholars have proposed that the liberal peace could be partly (Russett & Oneal, 2001) or primarily (Gartzke, 2007; but see Dafoe, 2011) attributed to liberal economic factors, such as commercial and financial interdependence. In particular, Erik Gartzke, Quan Li & Charles Boehmer (2001), henceforth referred to as GLB, have demonstrated that measures of capital openness have a substantial and statistically significant association with peaceful dyadic relations. Gartzke (2007) confirms that this association is robust to a large variety of model specifications.

To explain this correlation, GLB propose that countries with open capital markets are more able to credibly signal their resolve through the bearing of greater economic costs prior to the outbreak of militarized conflict. This explanation is novel and plausible, and resonates with the rationalist view of asymmetric information as a cause of conflict (Fearon, 1995). Moreover, it implies clear testable predictions on evidential domains different from those examined by GLB.

In this article we exploit this opportunity by constructing a confirmatory test of GLB’s theory of market-mediated signaling. We first develop an innovative quantitative case selection technique to identify crucial cases where the mechanism of market-mediated signaling should be most easily observed. Specifically, we employ quantitative data and the statistical models used to support the theory we are probing to create an impartial and transparentmeans of selecting cases in which the theory – as specified by the theory’s creators –makes its most confident predictions. We implement three different case selection rules to select cases that optimize on two criteria: (1) maximizing the inferential leverage of our cases, and (2) minimizing selection bias.

We examine these cases for a necessary implication of market-mediated signaling: that key participants drew a connection between conflictual events and adverse market movements. Such an inference is a necessary step in the process by which market-mediated costs can signal resolve. For evidence of this we examine news media, government documents, memoirs, historical works, and other sources. We additionally examine other sources, such as market data, for evidence that economic costs were caused by escalatory events. Based on this analysis, we assess the evidence for GLB’s theory of market mediated costly signaling.

Our article then considers a more complex heterogeneous effects version of market-mediated signaling in which unspecified scope conditions are required for the mechanism to operate. Our design has the feature of selecting cases in which scope conditions are most likely to be absent. This allows us to perform an exploratory analysis of these cases, looking for possible scope conditions. We also consider alternative potential mechanisms. Our cases are reviewed in more detail in the online appendix.1

To summarize our results, our confirmatory test finds that while market-mediated signaling may be operative in the most serious disputes, it was largely absent in the less serious disputes that characterize most of the sample of militarized interstate disputes (MIDs). This suggests either that other mechanisms account for the correlation between capital openness and peace, or that the scope conditions for market-mediated signaling are restrictive. Of the signals that we observed, strategic market-mediated signals were relatively more important than automatic market-mediated signals in the most serious conflicts. We identify a number of potential scope conditions, such as that (1) the conflict must be driven by bargaining failure arising from uncertainty and (2) the economic costs need to escalate gradually and need to be substantial, but less than the expected military costs of conflict.

Finally, there were a number of other explanations that seemed present in the cases we examined and could account for the capitalist peace: capital openness is associated with greater anticipated economic costs of conflict; capital openness leads third parties to have a greater stake in the conflict and therefore be more willing to intervene; a dyadic acceptance of the status quo could promote both peace and capital openness; and countries seeking to institutionalize a regional peace might instrumentally harness the pacifying effects of liberal markets.

The correlation: Open capital markets and peace

The empirical puzzle at the core of this article is the significant and robust correlation noted by GLB between high levels of capital openness in both members of a dyad and the infrequent incidence of militarized interstate disputes (MIDs) and wars between the members of this dyad (Gartzke, Li & Boehmer, 2001). The index of capital openness (CAPOPEN) is intended to capture the ‘difficulty states face in seeking to impose restrictions on capital flows (the degree of lost policy autonomy due to globalization)’ (Gartzke & Li, 2003: 575). CAPOPEN is constructed from data drawn from the widely used IMF’s Annual Reports on Exchange Arrangements and Exchange Controls; it is a combination of eight binary variables that measure different types of government restrictions on capital and currency flow (Gartzke, Li & Boehmer, 2001: 407). The measure of CAPOPEN starts in 1966 and is defined for many countries (increasingly more over time). Most of the countries that do not have a measure of CAPOPEN are communist.2

GLB implement this variable in a dyadic framework by creating a new variable, CAPOPENL, which is the smaller of the two dyadic values of CAPOPEN. This operationalization is sometimes referred to as the ‘weak-link’ specification since the functional form is consonant with a model of war in which the ‘weakest link’ in a dyad determines the probability of war. CAPOPENL has a negative monotonic association with the incidence of MIDs, fatal MIDs, and wars (see Figure 1).3 The strength of the estimated empirical association between peace and CAPOPENL, using a modified version of the dataset and model from Gartzke (2007), is comparable to that between peace and, respectively, joint democracy, log of distance, or the GDP of a contiguous dyad (Gartzke, 2007: 179; Gartzke, Li & Boehmer, 2001: 412). In summary, CAPOPENL seems to be an important and robust correlate of peace. The question of why specifically this correlation exists, however, remains to be answered.

The mechanism: Market-mediated signaling?

Gartzke, Li & Boehmer (2001) argue that the classic liberal account for the pacific effect of economic interdependence – that interdependence increases the expected costs of war – is not consistent with the bargaining theory of war (see also Morrow, 1999). GLB argue that ‘conventional descriptions of interdependence see war as less likely because states face additional opportunity costs for fighting. The problem with such an account is that it ignores incentives to capitalize on an opponent’s reticence to fight’ (Gartzke, Li & Boehmer, 2001: 400.)4 Instead, GLB (see also Gartzke, 2003; Gartzke & Li, 2003) argue that financial interdependence could promote peace by facilitating the sending of costly signals. As the probability of militarized conflict increases, states incur a variety of automatic and strategically imposed economic costs as a consequence of escalation toward conflict. Those states that persist in a dispute despite these costs will reveal their willingness to tolerate them, and hence signal resolve. The greater the degree of economic interdependence, the more a resolved country could demonstrate its willingness to suffer costs ex ante to militarized conflict.

Gartzke, Li & Boehmer’s mechanism implies a commonly perceived costly signal before militarized conflict breaks out or escalates: if market-mediated signaling is to account for the correlation between CAPOPENL and the absence of MIDs, then visible market-mediated costs should occur prior to or during periods of real or potential conflict (Gartzke, Li & Boehmer, 2001). Thus, the proposed mechanism should leave many visible footprints in the historical record. This theory predicts that these visible signals must arise in any escalating conflict, involving countries with high capital openness, in which this mechanism is operative

Clarifying the signaling mechanism

Gartzke, Li & Boehmer’s signaling mechanism is mostly conceptualized on an abstract, game-theoretic level (Gartzke, Li & Boehmer, 2001). In order to elucidate the types of observations that could inform this theory’s validity, we discuss with greater specificity the possible ways in which such signaling might occur.

A conceptual classification of costly signals

The term signaling connotes an intentional communicative act by one party directed towards another. Because the term signaling thus suggests a willful act, and a signal of resolve is only credible if it is costly, scholars have sometimes concluded that states involved in bargaining under incomplete information could advance their interests by imposing costs on themselves and thereby signaling their resolve (e.g. Lektzian & Sprecher, 2007).

However, the game-theoretic concept of signaling refers more generally to any situation in which an actor’s behavior reveals information about her private information. In fact, states frequently adopt sanctions with low costs to themselves and high costs to their rivals because doing so is often a rational bargaining tactic on other grounds: they are trying to coerce their rival to concede the issue. Bargaining encounters of this type can be conceptualized as a type of war-of-attrition game in which each actor attempts to coerce the other through the imposition of escalating costs. Such encounters also provide the opportunity for signaling: when states resist the costs imposed by their rivals, they ‘signal’ their resolve. If at some point one party perceives the conflict to have become too costly and steps back, that party ‘signals’ a lack of resolve. Thus, this kind of signaling arises as a by-product of another’s coercive attempts. In other words, costly signals come in two forms: self-inflicted (information about a leader arising from a leader’s intentional or incidental infliction of costs on himself) or imposed (information about a leader that arises from a leader’s response to a rival’s imposition of costs).

Additionally, costs may arise as an automatic byproduct of escalation towards military conflict or may be a tool of statecraft that is strategically employed during a conflict. The automatic mechanism stipulates that as the probability of conflict increases, various economic assets will lose value due to the risk of conflict and investor flight. However, the occurrence of these costs may also be intentional outcomes of specific escalatory decisions of the states, as in the case of deliberate sanctions; in this case they are strategic.

Finally, at a practical level, we identify three different potential kinds of economic costs of militarized conflict that may be mediated by open capital markets: capital costs from political risk, monetary coercion, and business sanctions. The most prominent mechanism proposed by Gartzke, Li & Boehmer (2001) to account for the correlation between capital openness and peace is that of capital costs. They note that 'since conflict threatens investments among disputing states, it makes such investments less desirable and capital becomes relatively scarce' (Gartzke, Li & Boehmer, 2001: 407) and hence more costly. Increased capital openness may increase the capital costs of escalation by increasing both the ease of capital flight (Abadie & Gardeazabal, 2003, 2007) and the expected harm of escalatory events to the national economy. This mechanism will be more effective in countries with more open capital markets; countries where the value of investments are more publicly observable (such as arises with a public stock exchange); and countries where leaders are more sensitive to the costs of capital.5

#### Cap is entrenched---they can’t force anti-capitalist policies through.

Hubert Buch-Hansen 18. Associate Professor, Department of Business and Politics, Copenhagen Business School. “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy”. Ecological Economics. April 2018. <https://doi.org/10.1016/j.ecolecon.2017.10.021>

Still, the degrowth project is nowhere near enjoying the degree and type of support it needs if its policies are to be implemented through democratic processes. The number of political parties, labour unions, business associations and international organisations that have so far embraced degrowth is modest to say the least. Economic and political elites, including social democratic parties and most of the trade union movement, are united in the belief that economic growth is necessary and desirable. This consensus finds support in the prevailing type of economic theory and underpins the main contenders in the neoliberal project, such as centre-left and nationalist projects. In spite of the world's multidimensional crisis, a pro-growth discourse in other words continues to be hegemonic: it is widely considered a matter of common sense that continued economic growth is required.

It is also noteworthy that economic and political elites, to a large extent, continue to support the neoliberal project, even in the face of its evident shortcomings. Indeed, the 2008 financial crisis did not result in the weakening of transnational financial capital that could have paved the way for a paradigm shift. Instead of coming to an end, neoliberal capitalism has arguably entered a more authoritarian phase (Bruff, 2014). The main reason the power of the pre-crisis coalition remains intact is that governments stepped in and saved the dominant fraction by means of massive bailouts. It is a foregone conclusion that this fraction and the wider coalition behind the neoliberal paradigm (transnational industrial capital, the middle classes and segments of organized labour) will consider the degrowth paradigm unattractive and that such social forces will vehemently oppose the implementation of degrowth policies (see also Rees, 2014: 97).

While degrowth advocates envision a future in which market forces play a less prominent role than they do today, degrowth is not an anti-market project. As such, it can attract support from certain types of market actors. In particular, it is worth noting that social enterprises, such as cooperatives (Restakis, 2010), play a major role in the degrowth vision. Such enterprises are defined by being ‘organisations involved at least to some extent in the market, with a clear social, cultural and/or environmental purpose, rooted in and serving primarily the local community and ideally having a local and/or democratic ownership structure’ (Johanisova et al., 2013: 11). Social enterprises currently exist at the margins of a system, in which the dominant type of business entity is profit-oriented, shareholder-owned corporations. The further dissemination of social enterprises, which is crucial to the transitions to degrowth societies, is – in many cases – blocked or delayed as a result of the centrifugal forces of global competition (Wigger and Buch-Hansen, 2013). Overall, social enterprises thus (still) constitute a social force with modest power.

Ougaard (2016: 467) notes that one of the major dividing lines in the contemporary transnational capitalist class is between capitalists who have a material interest in the carbon-based economy and capitalists who have a material interest in decarbonisation. The latter group, for instance, includes manufacturers of equipment for the production of renewable energy (ibid.: 467). As mentioned above, degrowth advocates have singled out renewable energy as one of the sectors that needs to grow in the future. As such, it seems likely that the owners of national and transnational companies operating in this sector would be more positively inclined towards the degrowth project than would capitalists with a stake in the carbon-based economy. Still, the prospect of the “green sector” emerging as a driving force behind degrowth currently appears meagre. Being under the control of transnational capital (Harris, 2010), such companies generally embrace the “green growth” discourse, which ‘is deeply embedded in neoliberal capitalism’ and indeed serves to adjust this form of capitalism ‘to crises arising from contradictions within itself’ (Wanner, 2015: 23).

In addition to support from the social forces engendered by the production process, a political project ‘also needs the political ability to mobilize majorities in parliamentary democracies, and a sufficient measure of at least passive consent’ (van Apeldoorn and Overbeek, 2012: 5–6) if it is to become hegemonic. As mentioned, degrowth enjoys little support in parliaments, and certainly the pro-growth discourse is hegemonic among parties in government.5 With capital accumulation being the most important driving force in capitalist societies, political decision-makers are generally eager to create conditions conducive to production and the accumulation of capital (Lindblom, 1977: 172). Capitalist states and international organisations are thus “programmed” to facilitate capital accumulation, and do as such constitute a strategically selective terrain that works to the disadvantage of the degrowth project.

The main advocates of the degrowth project are grassroots, small fractions of left-wing parties and labour unions as well as academics and other citizens who are concerned about social injustice and the environmentally unsustainable nature of societies in the rich parts of the world. The project is thus ideationally driven in the sense that support for it is not so much rooted in the material circumstances or short-term self-interests of specific groups or classes as it is rooted in the conviction that degrowth is necessary if current and future generations across the globe are to be able to lead a good life. While there is no shortage of enthusiasts and creative ideas in the degrowth movement, it has only modest resources compared to other political projects. To put it bluntly, the advocates of degrowth do not possess instruments that enable them to force political decision-makers to listen to – let alone comply with – their views. As such, they are in a weaker position than the labour union movement was in its heyday, and they are in a far weaker position than the owners and managers of large corporations are today (on the structural power of transnational corporations, see Gill and Law, 1989).

6. Consent

It is also safe to say that degrowth enjoys no “passive consent” from the majority of the population. For the time being, degrowth remains unknown to most people. Yet, if it were to become generally known, most people would probably not find the vision of a smaller economic system appealing. This is not just a matter of degrowth being ‘a missile word that backfires’ because it triggers negative feelings in people when they first hear it (Drews and Antal, 2016). It is also a matter of the actual content of the degrowth project.

Two issues in particular should be mentioned in this context. First, for many, the anti-capitalist sentiments embodied in the degrowth project will inevitably be a difficult pill to swallow. Today, the vast majority of people find it almost impossible to conceive of a world without capitalism. There is a ‘widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible to even imagine a coherent alternative to it’ (Fisher, 2009: 2). As Jameson (2003) famously observed, it is, in a sense, easier to imagine the end of the world than it is to imagine the end of capitalism. However, not only is degrowth – like other anti-capitalist projects – up against the challenge that most people consider capitalism the only system that can function; it is also up against the additional challenge that it speaks against economic growth in a world where the desirability of growth is considered common sense.

Second, degrowth is incompatible with the lifestyles to which many of us who live in rich countries have become accustomed. Economic growth in the Western world is, to no small extent, premised on the existence of consumer societies and an associated consumer culture most of us find it difficult to completely escape. In this culture, social status, happiness, well-being and identity are linked to consumption (Jackson, 2009). Indeed, it is widely considered a natural right to lead an environmentally unsustainable lifestyle – a lifestyle that includes car ownership, air travel, spacious accommodations, fashionable clothing, an omnivorous diet and all sorts of electronic gadgets. This Western norm of consumption has increasingly been exported to other parts of the world, the result being that never before have so many people taken part in consumption patterns that used to be reserved for elites (Koch, 2012). If degrowth were to be institutionalised, many citizens in the rich countries would have to adapt to a materially lower standard of living. That is, while the basic needs of the global population can be met in a non-growing economy, not all wants and preferences can be fulfilled (Koch et al., 2017). Undoubtedly, many people in the rich countries would experience various limitations on their consumption opportunities as a violent encroachment on their personal freedom. Indeed, whereas many recognize that contemporary consumer societies are environmentally unsustainable, fewer are prepared to actually change their own lifestyles to reverse/address this.

## DA

### DOJ DA---2AC

#### Merger guideline updates thump.

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

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

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

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

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

#### Biden’s numerous actions on antitrust thump.

Alex Gangitano 21. \*Reporter for The Hill. \*\*Lexi Lonas, Staff Writer for The Hill. “Biden declares war on anti-competitive practices with sweeping order.” The Hill. June 9th, 2021. <https://thehill.com/homenews/administration/562203-biden-to-sign-executive-order-on-anti-competitive-practices-in-tech?amp>

President Biden will sign a sweeping executive order on Friday, aimed at promoting competition in the economy through 72 initiatives cracking down on anti-competitive practices in multiple industries.

The order aims to bolster competition and make broadband services affordable, encourage innovation and competition among tech companies, address prescription drug pricing, allow hearing aids to be sold over the counter at drug stores, ban or limit noncompete agreements for workers, and make it easier for people to get refunds from airlines, among other provisions.

#### Even fully enforced Paris isn’t enough to solve warming.

Lindsay Maizland 21. Senior writer/editor, Asia. "Global Climate Agreements: Successes and Failures". Council on Foreign Relations. 4-29-2021. https://www.cfr.org/backgrounder/paris-global-climate-change-agreements

Is the Paris Agreement enough?

Most experts say no. Countries’ pledges are not ambitious enough and will not be enacted quickly enough to limit global temperature rise to 1.5°C or even 2°C.

Current policies would result in a 2.9°C rise by 2100, according to a tracker by Germany-based nonprofits Climate Analytics and NewClimate Institute. If governments follow through on pledges they have made so far under the Paris Agreement, it will still result in a 2.6°C rise.

“The Paris Agreement is not enough. Even at the time of negotiation, it was recognized as not being enough,” says CFR’s Hill. “It was only a first step, and the expectation was that as time went on, countries would return with greater ambition to cut their emissions.”

#### No impact to warming.

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.

### Politics DA---2AC

#### 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.

#### Appointing Khan thumps.

Mary Harris 21. Host and managing editor of What Next, Slate's new daily news podcast. She has reported throughout the public radio system, for NPR, Marketplace, and WNYC. “Trust-Busting Is Back” Slate. 06-22-21. https://slate.com/business/2021/06/lina-khan-biden-ftc-amazon-big-tech-monopoly-antitrust.amp

Mary Harris: Given everything you’ve just said, how big of a change is it that Lina Khan has been put in charge? I think **it’s a really massive shift**. **The reaction among the antitrust world was explosive**. The big thing to know is it’s not that the FTC has done a good or bad job over the last 40 years—I mean, I don’t think it’s done a good job—but, more importantly, it hasn’t been relevant. It hasn’t mattered. People don’t know commissioners’ names. Now you’re seeing people in Europe, antitrust **lawyers all over the country, investment analysts, and** **Big Tech people kind of freaking out that the FTC actually picked somebody who wants to govern.**

#### PC is fake.

Roberts 20 [David Roberts, writer about energy and climate change @ Vox. 12-1-2020, "Joe Biden should do everything at once," Vox, accessed 7-12-2021, https://www.vox.com/policy-and-politics/21724758/biden-transition-trump-polarized-climate-change-health-immigration] //BY \*\*\*edited for gendered language

Two-party partisan politics really is a zero-sum game

The theme of these stories is that Democrats relied on clever sequencing over and over again, imagining some amount of political capital (“credibility”) that they could ~~husband~~ [gather] and spend strategically to get assistance across the aisle, at every juncture underestimating the ferocity and unanimity of Republican opposition. They kept behaving as though they would find good-faith negotiating partners, as though they were still in the postwar American era of relatively low (or at least manageable) polarization.

What too few of them realized was that they were already in a new era of near-total polarization, with the population sorted into like-minded enclaves, a bifurcated media ecosystem nurturing stacked (and diametrically opposed) “mega-identities,” and voters motivated primarily by “negative partisanship,” which is to say, hatred of the other side.

A fully polarized two-party system really is a zero-sum game. Any victories or gains by one side come at the other side’s expense, even if the victory secures shared goals. The rational course for the party out of power is to fight with full intensity against everything, always, and that’s what Republicans did under Obama. With scarcely any exceptions, from 2010 through 2020, they pushed in every case for maximal partisan advantage, no matter the stakes or possible cost.

#### Infrastructure bill doesn’t go far enough to solve anything.

Cat Zakrzewski, 8-14-2021, "The Senate’s $1 trillion infrastructure bill includes funding to secure Americans’ water systems and power grids from cyberattacks," https://www.washingtonpost.com/technology/2021/08/14/cybersecurity-infrastructure-senate-legislation/

Yet least one House lawmaker has raised concerns that the measures in the Senate infrastructure package don’t go far enough. He thinks that there should be tougher cybersecurity requirements for entities that take infrastructure funding.

“The cybersecurity funding in the Senate infrastructure bill is a good start, but we’ve got a long ways to go in our battle to secure our nation against the full range of cyberthreats we face,” said Rep. Jim Langevin (D-R.I.), co-chair of the Congressional Cybersecurity Caucus. “I’d like to see broad requirements that all technology procured using these federal funds meet minimum security requirements and that money be set aside for security monitoring after it’s installed. Connected infrastructure is going to help the economy and our environment, but only if we can secure it.”

Public works officials welcomed the cybersecurity provisions of the Senate bill, noting they often struggle to balance defending their systems against cyber attacks with the daily demands of keeping Americans’ lights on and faucets flowing.

“Public works makes normal happen, and cybersecurity is woven into that in every different respect,” said Mark Ray, the director of public works and city engineer for Crystal, Minn., who also represents the American Public Works Association on the National Homeland Security Consortium, which convenes public and company officials to discuss emergency responses.

Ray said his 26-person public works staff doesn’t have the time or expertise to dig into every potential cyber risk, and they look to outside experts and the federal government for direction. “The more that we understand that, the more that we understand the connection and work to improve and secure everything, it will just benefit everybody across the board,” he said.

Others warned that making more money available to address cybersecurity is just a first step, and its efficacy will hinge on how government agencies implement the funding.

“Just because we made money eligible doesn’t mean the problem is solved,” said Shailen Bhatt, the president and chief executive of ITS America, a trade group representing transportation companies. “It’s sort of the beginning of the new frontier of this battle.”

The bill also could have gone further in addressing some of the cybersecurity concerns regarding the water supply, said Mark Montgomery, the executive director of the Cyberspace Solarium Commission, which is tasked with developing a strategic approach to defending the United States from cyberattacks. He said the legislation should have included grants specifically for cybersecurity, rather than broad grants that can also be used to shore up the systems against weather events and other risks.

He said the legislation also should have done more to get the U.S. Environmental Protection Agency more focused on managing cybersecurity risks.

“I think it falls short,” Montgomery said in an interview.

### Court Clog DA---2AC

#### Multiple big tech cases thump.

Emily **Birnbaum 20**. Emily Birnbaum is a tech policy reporter with Protocol. Her coverage focuses on the U.S. government's attempts to regulate one of the most powerful industries in the world, with a focus on antitrust, privacy and politics. Previously, she worked as a tech policy reporter with The Hill after spending several months as a breaking news reporter. She is a Bethesda, Maryland native and proud Kenyon College alumna.” Which of the Big Tech antitrust lawsuits has the best chance of winning?” Protocol. 12/17/20. https://www.protocol.com/big-tech-antitrust-case-ranking

For the first time ever, there's a real chance that Facebook and Google could be broken up. It's going to be a tough, years-long battle. But the companies are facing existential legal threats as government regulators and state attorneys bring five separate antitrust cases against them: two against Facebook and three against Google. None of the cases will be easy to prove. This is the most aggressive set of antitrust actions by the government in decades, and courts are more skeptical than ever. But the cases make a new era in antitrust enforcement, and anything is possible. Protocol ranked the lawsuits in order of least to most likely to succeed. 4. Texas-led case against Google Legal experts have expressed the most skepticism around the antitrust lawsuit against Google's ad stack dominance from the Texas-led coalition of 10 attorneys general. Some of the complaint's central claims, including alleged collusion between Facebook and Google, are enticing — but it's unclear if the coalition has the goods to back them up. "The Texas case could be a killer case," said Chris Sagers, an antitrust professor at Cleveland-Marshall College of Law. If the states are able to prove a horizontal conspiracy between Google and Facebook to rig the ad tech market, it would amount to a clear violation of Section 1 of the Sherman Act, which prohibits agreements that restrict trade. But Sagers said it's all in the details, and the some of the allegations "seem more ambiguous and subject to interpretation." It's difficult to analyze because so much of the complaint is redacted, particularly the sections about what Google admitted to in internal communications. And Google has already shot down a separate allegation in the suit, which claimed Google gained access to encrypted WhatsApp messages. On the other hand, a court likely won't struggle with the concept that Google has outsized power over all levels of the ad stack, and there's significant public evidence that it engaged in plenty of manipulative behaviors to maintain that control. It's also yet to be seen if any Democrats will join the Texas suit, which will struggle with credibility issues as Texas Attorney General Ken Paxton continues to face allegations of corruption and an ongoing FBI investigation. 3. Colorado- and Nebraska-led case against Google The complaint from the coalition of 35 attorneys general led by Colorado and Nebraska is sweeping and ambitious, with sections detailing Google's exclusionary conduct in search, its efforts to limit the visibility of specialized search engines and its growing dominance in emerging technologies like voice assistants. It's a serious case with broad bipartisan support, and its focus on Google's current efforts to muscle into voice assistants might appeal to a judge looking for ongoing anticompetitive behavior in a dynamic market. "Part of what I suspect these companies are going to argue is, 'What do you mean durable monopoly power? This is a dynamic setting and the moment you slow down, the rest of the world passes you by,'" said William Kovacic, former FTC chairman. "The Colorado complaint is saying, 'It is very competitive and you are using every bit of skill you have to anticipate what those new threats are and to squash them.'" But it's an open question whether antitrust is the best mechanism to rein in self-preferencing, one of the central allegations of the Colorado case. Hal Singer, a managing director at antitrust firm Econ One, has argued that self-preferencing "does not fit into any well-received antitrust paradigm." And even if the laws could be "stretched" to accommodate this type of exclusion, the pace of antitrust litigation is likely far too slow to remedy the harms to innovation, he wrote. It's yet to be seen how a court responds to allegations of self-preferencing as an antitrust violation. The states are arguing that Google restricts the way specialized sites like Yelp and Tripadvisor can advertise, harming their business and giving consumers fewer options. The Nebraska and Colorado-led coalition is planning to consolidate its case with the DOJ's, and a judge will have to consider each allegation on its own. "This lawsuit seeks to redesign search in ways that would deprive Americans of helpful information and hurt businesses' ability to connect directly with customers," Google said in a statement. "We look forward to making that case in court, while remaining focused on delivering a high-quality search experience for our users." 2. The FTC and state attorneys general bring cases against Facebook The cases against Facebook from the coalition of 48 state attorneys general and the FTC read like a wish list from progressive antitrust activists. The FTC is calling for Facebook to spin off WhatsApp and Instagram while alleging the company has destroyed privacy protections and elbowed out potential competitors in the battle to maintain its position as the biggest social network in the world. What's amazing about the twin cases is that the government could plausibly win, although it will be a steep uphill battle. "You have a monopoly that is acquiring nascent competitive threats," said Maurice Stucke, a former DOJ prosecutor and professor of law at the University of Tennessee. "You have anticompetitive intent, anticompetitive design and internal documents to show how these acquisitions further that anticompetitive design." The FTC and state cases are extremely similar and will likely be consolidated in federal court in Washington, D.C. They both focus on whether Facebook's acquisitions of Instagram and WhatsApp were anticompetitive and whether Facebook has leveraged the power of its APIs to kneecap potential rivals. But the government will likely have to surmount deep skepticism of its market definition: "personal social networking." They'll have to work hard to prove that Facebook exists in its very own marketplace that excludes social media sites like TikTok and YouTube. "If I had shown up at a meeting and announced that Facebook didn't compete with Google, Apple or TikTok, I would have been laughed out of the room," wrote Matt Perault, formerly Facebook's director of public policy, in an op-ed on Thursday. And the court will demand extensive evidence proving that Instagram and WhatsApp could have grown without Facebook's acquisition, a hypothetical situation that might be difficult to substantiate. "Could Instagram have developed without the investment of money and know-how from Facebook?" said Kristen Limarzi, a partner at Gibson, Dunn & Crutcher and former DOJ antitrust official. "I think that's unclear, but that's what the FTC will have to prove." 1. DOJ's case against Google The DOJ's case against Google, which was filed in October alongside a coalition of 11 Republican attorneys general, likely has the best shot at winning simply because it is the least ambitious. The complaint hews as closely to the 1990s Microsoft case as possible — a case that the government won even though it did not ultimately result in Microsoft's breakup. Paralleling the Microsoft case, the DOJ's complaint narrowly targets Google's "exclusionary contracts" with other companies, most prominently its more than $12 billion deal to keep Google as Apple's default search engine. So far, under the Trump administration, the case does not get into broader questions about Google's dominance in search or advertising technology. Legal experts said the DOJ's case alleges clear-cut violations of Section 2 of the Sherman Act, as long as it's able to substantiate its core claims. "It's a plausible Section 2 argument that is pretty well-substantiated, with plausible reasoning and citations to what looks like real evidence," Sagers said. Google has called the case "deeply flawed." "People use Google because they choose to, not because they're forced to," Google's chief legal officer, Kent Walker, said. But the DOJ will try to prove that users hardly have a choice in the matter. The case could benefit from the well-resourced lawyers working against Google, including attorneys with Oracle, AT&T, Microsoft and other top firms, and the open-minded judge it's been assigned to, Amit Mehta. It's still one of the most ambitious antitrust lawsuits to come from the U.S. government in decades, and it will face serious hurdles. Mehta could be skeptical of the DOJ's definition of the relevant market: "general search," which excludes specialized search engines like Amazon or Expedia. And it will be highly fact-specific, meaning the government has to provide extensive evidence proving its allegations.

#### Backlogs are inevitable---COVID and judge shortage.

Jenna Kurzyna 21. “Guilford County District Attorney discusses impacts COVID-19 had on our court system.” July 16, 2021. https://www.wfmynews2.com/article/news/crime/guilford-county-district-attorney-discusses-impacts-covid-19-had-on-our-court-system/83-fa56fdb0-4180-4725-a355-758b12355b73

"It's a hard cycle right now," Crump said. "You're never going to get back to where you were. It's kind of impossible at this point."

Crump said the pandemic impacted the courts in a big way. She also said Guilford County isn't the only courthouse dealing with a big backlog.

"It was devastating, I mean it was horrible," Crump said. "We were doing what we could do, but you have to remember that Guilford County is the third-largest county in the state. And we normally deal with a lot of cases."

Crump said at first, they were only allowed to do 100 cases a day.

"On an average day we could have anything in criminal district courts, we could have anything, from 400 to 600 defendants," Crump said. "So, when you have to modify that down to 100 cases, that's not doing a lot. Please understand that doesn’t mean 100 individuals or defendants, but 100 cases, meaning that one person could have 10 cases.”

Crump said because of the modifications, she doesn't know if they will ever catch up with their backlog.

"Realistically, we'll try to make a dent but it's impossible because we're still not even at 50% and cases are still coming in," Crump said.

Crump said explaining to those still waiting for their day in court, is frustrating all around. And when it comes to new cases, it might be a while before they are heard.

"We've had people waiting for trial since 2019, 2018, and as you know the homicide rate is going on up," Crump said. "Well those new cases, they are going to have to wait years because you still have to get through the old cases."

Crump said they are only working 200 cases a day because the courts are still not operating at 100% yet.

“I can’t tell you when we’re going to get up to 100% and we probably never will,

" Crump said. "Unless you have extra judges and extra courtrooms, which we don’t have, then you still can’t move all of those cases."

Even though Crump doesn't think they will be able to catch back up with the backlog, they are trying.

"We're trying to do everything that we can to make sure people have their day in court," Crump said. "Not just the individual that are charged but also your victims."

Another challenge was trying not to overcrowd the jails while people waited for a court date. One way Crump tried to handle that was consenting to an unsecured bond for non-violent offenders.

"If a magistrate set a bond for $1,000 or less than we consented to that bond being unsecured because we didn't want the jails to pile up and have COVID run rampant through the jails," Crump said.

One thing Crump wants the community to know is they never stopped working even when the courts weren't in session.

“I want the community to know that the DA's Office, we have been working tirelessly to move these cases," Crump said. "We had two shutdowns when the courthouse was shut down, that is the only time my office was shut down, otherwise, we were open we were working."

#### The plan’s cases are decided quickly---that prevents clog.

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

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

#### The plan creates clarity---that’s better for courts.

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

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

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

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

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

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

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

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and how each other works. They don’t understand the public and the industries they’re supposed to regulate, so you see these counterproductive, counterintuitive outcomes.

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

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

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

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

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

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

# 1AR

## Cap K

### Alt Fails---1AR

#### “Global movements” is a farce.

Epstein 14 (Barbara, author, former Professor Emerita in the Humanities Division @ UC Santa Cruz, “Prospects for a Resurgence of the U.S. Left”, Tikkun, Volume 29, Number 2, Spring 2014, Project Muse)

The United States has no coherent, effective Left. Over the last four decades, since the movements of the sixties and seventies went into decline, the problem of the degradation of the environment has reached a level that threatens the existence of humans and other species on the planet. The neoliberal form of capitalism that has taken hold globally has caused the gap between the wealth and power of those at the top and the rest of us to widen dramatically, undermining the quality of life of the majority and threatening the public arena itself. Despite the depth of the economic crisis of 2008, there is no substantial movement for the abandonment of neoliberalism, the regulation of industry, or the creation of a more egalitarian economy. The environmental movement has grown, but not to the point of having the capacity to reverse environmental degradation. There are undoubtedly more people and projects devoted to economic and social justice—and to environmental sustainability—than there were in the sixties and seventies. The problem has to do with collective impact. No movements of the Left have emerged capable of making a real difference in the conditions that we face. Why is this? And what can be done about it?¶ A Fatalistic Approach to Gradual Crises¶ The weakness of the Left is partly due to the fact that these problems have come upon us gradually, allowing us to accommodate ourselves to them. The widening of the gap in wealth and power has been for the most part incremental; it is only in retrospect that one can see how dramatic the effect has been. The same is true of the working day, which has been lengthened, for most people, bit by bit, but at no point by enough to lead to a widespread revolt. Something similar could be said about the environment. Environmental crises for the most part take place somewhere other than where one lives. Such crises are increasingly severe and increasingly common, and there is widespread awareness that at some point in the future we are all likely to be directly affected. But a future crisis does not have the mobilizing capacity of a crisis that confronts one in the present. Most people, including those who are aware of the depths of these problems, go about their business, doing what they—we—have always done, though with increasing apprehension about the future.¶ “The environmental movement has grown, but not to the point of having the capacity to reverse environmental degradation,” Epstein writes. Environmental activists march in Detroit to protest its air-polluting incinerator.¶ “The environmental movement has grown, but not to the point of having the capacity to reverse environmental degradation,” Epstein writes. Environmental activists march in Detroit to protest its air-polluting incinerator.¶ A widespread sense that nothing can be done is probably an even more significant obstacle to effective, collective action than the gradual character of these changes. Mobilization against a system, an institution, or a ruling elite is most likely to take place when it seems not only oppressive but also outmoded, on the way out, or at least on the defensive. The Civil Rights Movement had existed since World War II but gained momentum in the late fifties and early sixties, when the international aspirations of the United States made racism at home a serious embarrassment. Feminism likewise took hold on a mass basis when the entry of women into the labor force on a large scale placed patriarchal authority in question and gave women the leverage to demand equality. Movements for change are most likely to take hold when change seems possible, when there are levers that can be grasped, as when oppressive institutions seem ready to collapse or are widely seen as illegitimate. It helps when some of those in positions of power agree that the existing system is not working and support change. The depression of the 1930s affected the corporate class as well as the rest of society, though not nearly as badly; fear of a continuing downward economic spiral led some among the elite to agree that changes of some sort were necessary. In the wake of 2008, while most people have suffered economic reverses, corporate profits have more than recovered. Neoliberal capitalism is thriving, at least if measured by corporate profits.¶ The Left is weakened by its deep generational divide and by the fact that “white leftists tend to know little about movements of the Left among people of color,” Epstein writes. Here, members of a Latina immigrant organization participate in a May Day rally in San Francisco.¶ Click for larger view¶ The Left is weakened by its deep generational divide and by the fact that “white leftists tend to know little about movements of the Left among people of color,” Epstein writes. Here, members of a Latina immigrant organization participate in a May Day rally in San Francisco.¶ This is not to argue that movements of the Left take shape and grow only when conditions are propitious. Left-led resistance movements formed in the major ghettos of German-occupied Central and Eastern Europe, despite the fact that the deaths of those involved seemed the most likely outcome. Slave revolts took place in the West Indies and the American South under similar circumstances. But when circumstances are difficult, oppositional movements are most likely to take hold when there are stable organizations that provide a sustained, reliable framework for action, and when such movements have compelling goals and a clear conception of how to achieve these goals—that is, a strategic perspective. The current U.S. Left has none of these.¶ Fragmentation and Generational Divides¶ The major organizations of the Left that once provided the framework for ongoing collective action and strategic discussion either no longer exist or have atrophied. There are large numbers of progressive nonprofits but few organizations that those who want to make a difference, but lack special skills or expertise, can join and work with. Among young people, leftist activist projects thrive, but they tend to come and go. The most stable and influential institutions of the Left are its media outlets: published and online journals, radio stations, a few left-wing presses, and books with a left-wing perspective published by mainstream presses. The central role of media leads to a Left that is defined more by what people read and what opinions they hold than by their associations or their practical activity.¶ We have a fragmented Left held together by a vague commitment to a more just, egalitarian, and sustainable world, but in practical terms lacking a common focus or basis for coordinated action. The fragmented and fluid character of the Left reflects the fragmentation and fluidity of contemporary society: there is probably no going back to the structured and stable organizations of the past (the Socialist Party, the Communist Party, or even the Students for a Democratic Society) consisting of members who were likely to remain active and engaged for many years. But a Left based on individuals with leftist views and a plethora of frequently ephemeral projects has little ability to consider its collective direction and less influence than its numbers would warrant.¶ The Left is weakened especially by the deep divide between the older generation, veterans of the movements of the sixties and seventies, now in their sixties or older, and the younger generation, in their early forties or younger. The outlook and vocabulary of the older generation, shaped for the most part by perspectives ranging from Marxism to social democracy, tends to clash with the outlook of the younger generation, among whom anarchism has been a major influence. The result is little contact and less cooperation between activists of the two generations. In addition, white leftists tend to know little about (and have little contact with) movements of the Left among people of color. And the sector of the Left that consists largely of professionals and intellectuals has little contact with the labor Left.¶ The most promising sector of the U.S. Left is the arena of youth activism that tilts toward anarchism and that was at the center of the Occupy movement. Activists in this arena share an opposition to all forms of oppression (racism, sexism, homophobia, and others), a dislike of hierarchy and a deep suspicion of the state, a vision of an egalitarian, cooperative, and decentralized society, and a desire to model that society in their political practice. Many would include an explicit opposition to capitalism.¶ The Occupy movement was shaped by the idealism, energy, and commitment of a politics influenced by what some call anarchism and others call anti-authoritarianism. Occupy’s protest against the consolidation of wealth and power among the few plus the utopian quality of Occupy communities led to explosive growth of the movement and massive public support. But when police closed the encampments, the movement, as a mass movement, soon collapsed. Valuable organizing projects spun off, but these are quite different from Occupy. One may criticize Occupy activists for not having given much thought to what form the movement would take after the inevitable police closures. But the episodic, fleeting character of Occupy is shared by movements around the world: an incident sets off protest over long-standing grievances, protest mushrooms into a mass movement, the protest is repressed, and the movement collapses, having altered public discourse but leaving no organization or institution capable of bringing about social change. This is the weakness of the ascendant form of leftist or protest politics that emphasizes spontaneity and avoids organizational forms able to last.

### Transition Wars---1AR

#### 2. Transition wars---bigger collapse is worse.

Qian Liu 18. China-based economist. “From economic crisis to World War III.” Project Syndicate. 11-8-2018. <https://www.project-syndicate.org/commentary/economic-crisis-military-conflict-or-structural-reform-by-qian-liu-2018-11>

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict. The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates. But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labour markets to tax systems, fertility patterns, and education policies. Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment. The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008. In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929. As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilise and stimulate the economy. If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterised also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war. For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun. To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict. According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels. This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalisation, political polarisation, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis. Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald J. Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen. Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington, considering such a scenario could help us avoid it because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

### Alt Kills Environment---1AR

#### 7.The alt either damages the environment more or results in a massive human die-off.

John Asafu-Adjaye 15. Associate professor of economics at the University of Queensland in Brisbane, Australia. Et al. “An Ecomodernist Manifesto”. April 2015. <https://www.ecomodernism.org/manifesto-english>

The processes of decoupling described above challenge the idea that early human societies lived more lightly on the land than do modern societies. Insofar as past societies had less impact upon the environment, it was because those societies supported vastly smaller populations.

In fact, early human populations with much less advanced technologies had far larger individual land footprints than societies have today. Consider that a population of no more than one or two million North Americans hunted most of the continent’s large mammals into extinction in the late Pleistocene, while burning and clearing forests across the continent in the process. Extensive human transformations of the environment continued throughout the Holocene period: as much as three-quarters of all deforestation globally occurred before the Industrial Revolution.

The technologies that humankind’s ancestors used to meet their needs supported much lower living standards with much higher per-capita impacts on the environment. Absent a massive human die-off, any large-scale attempt at recoupling human societies to nature using these technologies would result in an unmitigated ecological and human disaster.

### Can’t Solve Warming---1AR

#### 8.The alt can’t solve warming.

John Asafu-Adjaye 15. Associate professor of economics at the University of Queensland in Brisbane, Australia. Et al. “An Ecomodernist Manifesto”. April 2015. <https://www.ecomodernism.org/manifesto-english>

Meaningful climate mitigation is fundamentally a technological challenge. By this we mean that even dramatic limits to per capita global consumption would be insufficient to achieve significant climate mitigation. Absent profound technological change there is no credible path to meaningful climate mitigation. While advocates differ in the particular mix of technologies they favor, we are aware of no quantified climate mitigation scenario in which technological change is not responsible for the vast majority of emissions cuts.

### AT: Financial Crises---1AR

#### Financial stability is improving. Ignore fear mongering.

Tobias ADRIAN 17. Financial Counsellor and Director, Monetary and Capital Markets Department, IMF; previous Senior Vice President, Federal Reserve Bank of New York and Associate Director of the Research and Statistics Group; PhD, Economics, MIT. “Assessing Global Financial Stability.” Presentation at the London School of Economics. October 27. <http://www.imf.org/en/News/Articles/2017/10/27/sp-102717-assessing-global-financial-stability>.

There are good news: near-term financial stability risks are lower, driven by a decline in macroeconomic and emerging market risks.

As outlined in the IMF’s most recent World Economic Outlook, the upswing in global activity has gained further steam, with global growth projected to rise to 3.6 percent in 2017 and 3.7 percent in 2018—in both cases 0.1 percentage point above our previous forecasts, and well above the global growth rate of 3.2 percent in 2016. This is laying hopes for a sustained recovery and should allow for the eventual normalization of monetary policies.

The core of the global financial system is stronger. Systemically important banks and insurers continue to enhance their resilience by raising capital and liquidity, addressing legacy issues, and adapting their business models to the evolving regulatory and market environment.

In emerging markets, capital flows are rebounding, driven in part by stronger fundamentals. Portfolio inflows to emerging market economies are on track to reach $285 billion in 2017, more than twice the total over the past two years. The cost of financing is low, and their currencies and equity prices have strongly appreciated this year.

Globally, supportive monetary and financial conditions and buoyant financial markets have helped foster growth and repair balance sheets.

#### Capital buffers solve financialization.

Harald SCHEULE, Eliza WU, AND Christina BUI 17. \*\*Associate Professor of Finance at the University of Technology, Sydney. \*\*Associate Professor, Finance, UTS. \*\*PhD Candidate, Finance, UTS. “The value of bank capital buffers in maintaining financial system resilience.” *Journal of Financial Stability* 33: 23-40. Emory Libraries.

Second, our study provides unique insights regarding the rate at which the loss measures dissipate in response to strengthening capital buffers. It is evident from the research design that higher capital buffers are associated with lower system-wide losses. Banks that hold capital buffers in excess of the regulatory requirement are able to absorb losses more sufficiently, and hence, are less likely to pass the losses onto the whole system. We find that the speed of decline reduces as the capital buffer increases. Given a confidence level of 99.9% and an additional capital buffer of 2% (or 5% for every bank including current capital buffers), the loss would be mitigated.

Third, we shed new light on the debate regarding the trade-off between the benefits and costs of raising capital adequacy requirements. Our results show that a safer level of regulatory capital reduces the risk of bank failures and hence, lowers the cost of banks’ debt. However, this is achieved at the expense of reduced loan growth and higher lending rates.

From a policy perspective, our findings are relevant to all economies that did not experience economic downturns after the start of loss data collections (e.g., South East Asian countries where data collection only commenced well after the South East Asian crisis in 1997 and limited loss records are available). Bank regulators could apply our empirical approach to assess the adequacy of capital buffers and the likelihood and magnitude of losses exceeding such buffers to quantify the implied costs for society or to aid the design of more resilient financial systems. We reinforce the argument that higher capital requirements imply a higher level of resilience of the financial system.

### Cap Solves Warming---1AR

#### 1. Tech is key.

John Asafu-Adjaye 15. Associate professor of economics at the University of Queensland in Brisbane, Australia. Et al. “An Ecomodernist Manifesto”. April 2015. <https://www.ecomodernism.org/manifesto-english>

High-efficiency solar cells produced from earth-abundant materials are an exception and have the potential to provide many tens of terawatts on a few percent of the Earth’s surface. Present-day solar technologies will require substantial innovation to meet this standard and the development of cheap energy storage technologies that are capable of dealing with highly variable energy generation at large scales.

Nuclear fission today represents the only present-day zero-carbon technology with the demonstrated ability to meet most, if not all, of the energy demands of a modern economy. However, a variety of social, economic, and institutional challenges make deployment of present-day nuclear technologies at scales necessary to achieve significant climate mitigation unlikely. A new generation of nuclear technologies that are safer and cheaper will likely be necessary for nuclear energy to meet its full potential as a critical climate mitigation technology.

In the long run, next-generation solar, advanced nuclear fission, and nuclear fusion represent the most plausible pathways toward the joint goals of climate stabilization and radical decoupling of humans from nature. If the history of energy transitions is any guide, however, that transition will take time. During that transition, other energy technologies can provide important social and environmental benefits. Hydroelectric dams, for example, may be a cheap source of low-carbon power for poor nations even though their land and water footprint is relatively large. Fossil fuels with carbon capture and storage can likewise provide substantial environmental benefits over current fossil or biomass energies.

#### 2. Creates political will.

Faik Bilgili 16. \*Erciyes University, Faculty of Economics and Administrative Sciences, Department of Economics. \*Emrah Koçak, Ahi Evran University, Mucur Vocational School. \*Ümit Bulut, Ahi Evran University, Faculty of Economics and Administrative Sciences, Department of Economics. “The dynamic impact of renewable energy consumption on CO2 emissions: A revisited Environmental Kuznets Curve approach”. Renewable and Sustainable Energy Reviews. 2016. <https://www.sciencedirect.com/science/article/abs/pii/S1364032115011594>

According to the scale effect, given the level of technology, more resources and inputs are employed to produce more commodities at the beginning of economic growth path. Hence, more energy resources and production will induce more waste and pollutant emissions, and the level of environmental quality will get worse (Torras and Boyce [11], Dinda [2], Prieur [12]). The structural effect states that the economy will have a structural transformation, and economic growth will affect environment positively along with continuation of growth. In other words, as national production grows the structure of economy changes, and the share of less polluting economic activities increases gradually. Besides, an economy experiences a transition from capital-intensive industrial sectors to service sector and reaches technology-intensive knowledge economy (the final stage of the structural change). Due to the fact that technology-intensive sectors utilize fewer natural sources, the impact of these sectors on environmental pollution will be less. The last channel of the growth process is the technological effect channel. Since a high-income economy can allocate more resources for research and development expenditures, the new technological processes will emerge. Thus, the country will replace old and dirty technologies with new and clean technologies, and environmental quality will deepen (Borghesi [13], Copelan and Taylor [14]). Consequently, environmental pollution initially increases and later decreases as a result of scale, structural and technological effect emerging along with growth path.

Some studies of EKC hypothesis consider income elasticity of clean environment demand (Beckerman [15], Selden and Song [16], McConnel [17], Panayotou [18], Carson et al. [19], Brock and Taylor [20]). Accordingly, the share of low-income people’s expenditures for food and basic necessities is higher than that of high-income societies’ expenditures for the same type of commodities (Engel’s Law). As income level and life standards rise in conjunction with economic growth, the societies’ demand for clean environment advances. Besides, societies make often pressure on policy makers to protect the environment through new regulations. One might argue that, because of these reasons, clean environment is a luxury commodity and the demand elasticity of clean environment is higher than unity (Dinda [2]).

#### Try or die for innovation---market mechanisms facilitate necessary breakthroughs in tech that solve the environment. All their warrants for why its bad are better explained by consumption not competition, which the alt also doesn’t change and proves it fails---that’s Buchansen and…

Bosch 19 (Stephan Bosch, PhD, Institute of Geography, University of Augsburg; Matthias Schmidt, PhD, Institute of Geography, Chair for Human Geography, University of Augsburg; “Is the post-fossil era necessarily post-capitalistic? – The robustness and capabilities of green capitalism”, Ecological Economics, 161, 270–279. doi:10.1016/j.ecolecon.2019.04.001)

6. Conclusion

In this paper, we argued that capitalism is not only much more robust than presumed by its critics, but moreover features promising capabilities with regard to solving the environmental crisis.

At the beginning, we elucidated that capitalism is able to prevail even given the end of fossil energy carriers and to maintain its productivity also within a regenerative energy system. Innovative concepts of storage, direct current transmission, and smart grids play a core role herein. Moreover, we were able to show that crisis is an essential element of the capitalist social order, with critical situations even being able to provide the necessary preconditions for the economy's transformation towards sustainability. Innovation is an essential ingredient of this process. We argued that precisely the preconditions given in competitive capitalism generate innovations. Therefore, in our view, the decisive social advantage of a competition-oriented capitalist system is this: as expressed by Schumpeter's concept of creative destruction, it offers maximum incentive for entrepreneurial initiatives. According to the theory of economic development, this incentive cannot be given within the socialist markets or degrowth-oriented societies favoured, but not more specifically detailed, by Harris (2013) and Kallis (2011). Yet this stimulus is crucial as it is accompanied by greater innovational strength, thus providing more auspicious preconditions for groundbreaking innovations, e.g. regarding aspects of technology, education, vocational training, research, social infrastructure, medicine, and nature protection (Schumpeter, 1994; Iversen, 2005; Wangler, 2013). However, we again want to point out the numerous social problems of the deployment of renewable energies (e.g. Aitken, 2010), especially concerning large-scale infrastructure projects (e.g. Avila, 2018).

In the context of competitive capitalism as described by Schumpeter, the promising capabilities of green capitalism were presented in detail. Nevertheless, the predominant criticism of capitalism scarcely assumes the Schumpeterian concept of ‘creative destruction’. Rather, it focuses on a much later stage of evolution of the economic system, in which the socio-economic disparities as a result of economic, but also of other factors have manifested themselves distinctly and with great complexity (cf. trustified capitalism). The pure criticism of capitalism thus seems to us to be too superficial as an explanatory model, which relies on arguments that disregard precisely those fertile approaches to surmounting the energetic and environmental crisis that presently arise from numerous processes of creative destruction. The cradle-to-cradle approach illustrated above is only one example of a concept that, by means of innovation, abandons the old and establishes the new. Yet we also think that competition and the market alone will not suffice to concertedly solve the global environmental crisis. This calls for political action that, by creating suitable institutional frame conditions, succeeds in pooling society's forces with regard to the ecological questions of our time, thus specifically promoting innovation.

We demonstrated that the usefulness of state measures always also depends on the respective specific national and economic context. An objection to capitalist social orders in general disregards this diversity of contexts and is at risk of overlooking important determinants of crisis management. The decisive difference in the various capitalist systems' innovative strength lies in the degree to which the cooperation of the major market players – state, enterprises, science, and civil society – is institutionalised. This implies that a central part falls to the state in embedding the actions of the most important players into appropriate institutional structures. Only thereby will it be possible to shoulder the heavy load of material, costs, work, and coordination required for the energy system's transformation. A non-committal state runs the risk of failing this task. E.g., Solomon and Krishna (2011) showed that the intended transformation of the energy system in the USA after the oil crisis was unsuccessful due to the lack of suitable preconditions for innovation in niche markets. Moreover, Ćetković and Buzogány (2016) found that in liberal manifestations of capitalism, the deficiency of political and institutional instruments inhibits the necessary orchestration of activities on the part of state, industry, and financial sector.

In sum, even though fossil fuels and the capitalist system based upon them have given rise to the environmental crisis, surmounting the crisis does not necessarily call for surmounting market-based approaches; rather, market economies based on regenerative energy systems that are competition-oriented and guided by state measures may develop great ecological and socio-economic effectivity.

### Reg Cap---1AR

#### Capitalism’s not monolithic---regs solve their impacts and preserve positives.

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Growing distrust of capitalism follows from its failure to address major socioeconomic challenges, not least climate change and inequalities in opportunity, income, and wealth. While private incentives under capitalism are good at stimulating efficiency, growth, and innovation, they also generate unequal income and wealth distributions (even in a context of intense competition), often at odds with social norms of fairness. Moreover, capitalist systems tend to underinvest in public goods like education, health care, and social insurance – all critical factors in the pandemic response – while also discounting negative externalities such as greenhouse-gas emissions.

These shortcomings of capitalism are predictable, but they are remediable through public policies and institutions. Tax and transfer policies and minimum wages can reduce income and wealth disparities, just as public investment in education, training, and health care can enhance opportunity by providing access to good jobs and fostering the creation of new enterprises. Likewise, a price on carbon dioxide and regulations limiting or banning carbon emissions can help the world avert the existential threat of climate change.

Critics of capitalism often miss (or choose to ignore) that there is no single canonical model. Europe’s various “social market” models differ significantly from the neoliberal variant in the US. And even within the US, there are important differences between states and localities.

Some of these distinctions have been highlighted in the responses to the COVID-19 pandemic and recession. All advanced economies have deployed unprecedented levels of fiscal and monetary stimulus in the face of “K-shaped” or “dual” recessions in which lower-wage workers have suffered disproportionately more than other cohorts. Unlike the US, Germany and several other European countries have deployed measures specifically designed to keep as many workers as possible in their jobs. Because these countries have generous social insurance and benefits, including sick leave and family leave, workers and their families have been able to cope with both COVID-19 and sudden drops in their incomes.

Differences in national health-care models have also become more apparent. Unlike European capitalist systems that provide universal coverage, 14.5% of America’s non-elderly population (ages 18-64) remains uninsured. Moreover, owing to America’s heavy reliance on employer-based insurance, the pandemic has pushed at least 15 million more workers at least temporarily into the uninsured pool.

With their strong public-health systems, many European countries were also better equipped to carry out widespread testing and vaccine distribution. The US, meanwhile, has utterly failed to contain the virus, and is now delegating the vaccination campaign to under-resourced state and local authorities.

In another contrast with the US, Europe has dedicated about one-third of its massive stimulus program to investments aligned with its commitment to achieve carbon neutrality by mid-century. America’s federal stimulus measures have been silent on climate with few conditions of any kind.

Within the US, individual states’ responses to the COVID-19 crisis reflect different variants of capitalism. In California, Governor Gavin Newsom’s recent 2021-22 budget proposal reveals some distinctive features. In terms of health-care coverage, California remains a national leader with a Medicaid program covering more than 13 million people. Despite the pandemic-induced recession, the state is increasing its minimum wage to $14 per hour in 2021, on track to realize the target of $15 per hour in 2022 for all businesses employing 26 or more workers; many municipalities, including Los Angeles and San Francisco, have already achieved or exceeded the $15 target. (On January 1, 2021, 20 other states also raised their minimum wages, whereas the US federal minimum wage has remained unchanged at $7.25 per hour since 2009.)

California has also expanded coverage of its Earned Income Tax Credit (EITC) and Young Child Tax Credit to include undocumented workers who are otherwise denied the benefits of federal stimulus packages. Together, these tax credits applied to 3.6 million California households in 2020, adding $1 billion in total income. The state also passed new legislation significantly expanding unpaid family-leave rights. Employers with as few as five employees now must provide this option as well as more time for paid sick leave for workers forced to self-isolate or quarantine as a result of COVID-19 exposure or diagnosis.

Looking ahead, Newsom has proposed an additional $600 one-time cash payment to all taxpayers who are eligible for the state’s EITC in 2021. His proposed 2021-22 budget also earmarks $372 million to expedite the distribution of COVID-19 vaccines, and includes $4.5 billion for programs to drive economic growth and job creation once restrictions on normal activities have been lifted. These programs include $575 million in grants to small businesses and nonprofits, in addition to the $500 million for such grants implemented in late 2020 amid forced business closures. The proposal also allocates up to an additional $50 million for the California Rebuilding Fund, a public-private partnership, to support up to an additional $125 million of low-interest loans to underserved small businesses throughout the state.

California’s distinctive approach to market capitalism also emphasizes climate sustainability, using both carbon pricing and efficiency standards to achieve ambitious decarbonization targets. Under a 2018 state law, 60% of electricity must come from renewable resources by 2030, and 100% by 2045. California runs the world’s fourth-largest cap-and-trade system and will be setting even lower caps (and thus a higher carbon price) next month. In September 2020, Newsom announced an executive order requiring that zero-emission vehicles account for 100% of new car sales by 2035. His proposed budget seeks $1.5 billion to accelerate the infrastructure investment needed to achieve this goal.

President-elect Joe Biden has just announced a $1.9 trillion emergency rescue plan to counter the pandemic’s surge and provide substantial relief to workers, families, small businesses, and state and local governments. Prompt congressional passage of this plan is a critical first step in the renovation of America’s outdated neoliberal version of capitalism. As the economy recovers from the deep and uneven COVID-19 recession, the US must “build back better” by strengthening its social safety net, increasing public investment in education, health care, and other public goods, and rejoining the global charge against climate change. Lessons from the more successful variants of market capitalism in Europe and California point the way forward.

#### Pricing in solves but only the market model works.

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Applications to Food, Environment, and Climate Change

Let us turn to a concrete example. It is often claimed that we need less capitalism, less growth, and less globalization if we are to successfully address such challenges as climate change, population growth, air and water pollution, feeding the world, ensuring sustainable development for the world's poorest people, and other interrelated challenges at the environmental nexus.22

However, if the argument for well-regulated capitalism is sound, then these claims are wrong. Just because the aforementioned challenges may require pervasive changes throughout the economy does not mean that they require large changes to the basic structure of the economy such as a move away from capitalism.

Climate change—like many large-scale environmental harms—is the perfect example to illustrate why large environmental challenges that require pervasive changes to the economy need not require large changes to the economy's basic structure. The key point is that in that an unregulated marketplace polluters do not pay the true cost to society of their pollution, which incentivizes too much pollution; the best solution for society in the case of climate change and many other large environmental challenges is simply to use markets to regulate the relevant pollution by putting an appropriate price on emissions (reflecting the cost to society), so that people and firms have to pay the true cost of their emissions. This could be accomplished by putting a simple tax on emissions, or by instituting a more complicated market-based system.23

In more detail, the problem of climate change arises because humans do not have to pay the cost of the harms from greenhouse gas (GHG) emissions when they engage in emitting activities. As a result of not having to pay the true cost of these activities, we make decisions that lead to too many emissions, and a worse outcome than we could achieve if we behaved differently, which would require pervasive changes throughout the economy. But according to mainstream economics, the best solution to this problem is a textbook example of well-regulated capitalism that applies the theory of externalities to achieve pervasive changes across the economy at the least cost to society: We should tax24 GHG emissions at a rate equal to the harm they inflict if emitted, because this will (to a first approximation) create the right incentives to cause all of the pervasive changes throughout every aspect of the economy in the way that best achieves the optimal level of GHG emissions for society.25 And because one ton of GHG emissions does the same harm regardless of where it is emitted on the earth, there is just a single price that we should use as a tax on all emissions regardless of where they occur.

Many economists, including Nobel laureate William Nordhaus, argue that pricing the externality in this simple way is not only necessary to solving climate change but also essentially sufficient.26 Other economists argue that investments in public goods like basic knowledge and infrastructure might also be necessary, as well as measures to address equity and justice (such as investing the revenues from a carbon tax in a progressive way, having different carbon prices in different regions that collectively lead to the same globally optimal reductions that could be achieved with a single uniform global price, or even putting additional weight on co-benefits from air pollution reductions via climate policy in places where minorities have historically been unjustly saddled with disproportionately high exposure to pollutants). These additional measures would be taken on the grounds that climate policy will be enacted in a “nonideal”/“second-best” context in which background distortions, inequity, and injustice make them necessary to achieve the best outcome.27 But these measures are all part and parcel to well-regulated capitalism.

Furthermore, getting rid of capitalism would involve harm to the world's poorest and most vulnerable people that could exceed the harm that is at stake for the world in connection with climate change and other environmental harms. Evidence for this claim is provided by taking the quantitative magnitude of health, wellbeing, and justice gains due to capitalism, according to the argument for premise 1 above, projecting trends into the future, and comparing these gains to the quantitative magnitude of health, wellbeing, and justice losses at issue in connection with climate change and other environmental harms, as provided by leading estimates.28 Again, according to the argument for well-regulated capitalism, the essence of our situation is that humanity is better off with our current flawed forms of capitalism than we would be without capitalism; however, we are not as well off as we could be if we properly regulated the externalities that are causing environmental harms, so there is no argument in favor of the status quo. Instead, we should properly regulate externalities, and thus move toward well-regulated capitalism, which would yield the optimal trade-off for humanity between the benefits of capitalism and the costs of pollution and other ills.

Viewed through the lens of the argument for well-regulated capitalism, other environmental challenges have a similar structure, such as food-systems challenges (including feeding the world without destroying the environment), air and water pollution, ensuring sustainable development for the world's poorest, and other interrelated challenges at the environmental nexus. These problems are more complicated than climate change because they each involve multiple externalities and multiple background distortions, where the magnitude of those is sometimes highly location dependent, and issues of equity and justice are exceedingly complex. But the basic mechanisms for the best solutions are the same according to proponents of the argument for well-regulated capitalism, and indeed the best responses all require capitalism in order to work well and avoid a cure that is worse than the disease.

As a point of optimism in connection with these often-discouraging challenges, the relationship between the wealth of a society and environmental degradation often has an inverted U shape: As society initially gets wealthier, environmental degradation increases, until a point of peak degradation, after which the environment improves as society becomes rich enough to invest more and more in environmental quality rather than in basic needs. In the richest nations of the world, the peak of degradation arguably happened in the mid- to late twentieth century, and can be seen in measures of, for example, air and water pollution.29 In some emerging economies like China, there is hope that the peak has been reached and environmental degradation will now decline as society becomes richer and richer. For other developing nations, the peak has not been reached yet. Moreover, different forms of degradation (such as industrial air pollution and agricultural water pollution) might peak at different points within a nation. Putting this together, there is reason to hope that environmental challenges will reach a peak in our lifetime, and if we can meet them with well-regulated capitalism, they will begin to progressively improve over time in line with the end of extreme poverty for the entire world. Capitalism has brought these problems to a head because it has caused the world to get richer so quickly. But according to the argument for well-regulated capitalism, this is a good problem to have, as it is a symptom of a global society that is on the cusp of growing its way out of poverty and out of widespread environmental degradation. According to this argument, we should want to grow our way out of both of these problems as quickly as possible, rather than keep both problems around indefinitely by moving away from capitalism.30