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### Inequality---1AC

#### Advantage 1 is Inequality---

#### Increased concentration of buyer power in labor markets drives inequality.

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

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

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

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

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

#### Labor monopsony is the biggest internal link.

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 solves inequality and wages.

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

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

#### Growing economic inequality drives diversionary nationalism and makes war inevitable.

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

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

#### Labor market inequities create slow and unstable growth.

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

Why It Matters It should be fairly obvious why these imperfections in the labor market matter so much: one of the most disturbing aspects of growth in the United States in recent decades is the growing inequality (see, e.g., Ostry, Berg, and Tsangarides 2019; Stiglitz 2012, 2019; and a rash of other books on the topic). Most of the gains in the economy have gone to the top 10 percent, the top 1 percent, and the top 0.1 percent. Some of the growing inequality has to do with increases in wage disparity—known as labor market polarization. But much of it has to do with the decreasing share of national income going to workers.8 This is where the decreasing market power of workers and the increasing market power of corporations comes in. This decreasing market power is more than just changes in technology or even globalization: it is also the broader changes in our economy, society, and politics—and especially the changes described earlier in this introduction and elsewhere in this volume—that have led to this growing imbalance of market power. Research at the International Monetary Fund (Ostry, Berg, and Tsangarides 2014) and elsewhere (Ostry, Berg, and Tsangarides 2019) has highlighted the broader consequences of this growing inequality, even on economic performance. Economies that are more unequal are less stable and grow more slowly. In The Price of Inequality I explain the reasons that we pay such a high price for inequality.

#### Now is key.

Christopher Rugaber 21. Associated Press. “Federal Reserve keeps key interest rate near zero, signals COVID-19 economic risks receding.” https://www.chicagotribune.com/business/ct-biz-fed-interest-rates-economy-20210428-bumyc3ynpza6ri4ygsntmdsmya-story.html.

WASHINGTON — The Federal Reserve is keeping its ultra-low interest rate policies in place, a sign that it wants to see more evidence of a strengthening economic recovery before it would consider easing its support. In a statement Wednesday, the Fed expressed a brighter outlook, saying the economy has improved along with the job market. And while the policymakers noted that inflation has risen, they ascribed the increase to temporary factors. The Fed also signaled its belief that the pandemic’s threat to the economy has diminished, a significant point given Chair Jerome Powell’s long-stated view that the recovery depends on the virus being brought under control. Last month, the Fed had cautioned that the virus posed “considerable risks to the economic outlook.” On Wednesday, it said only that “risks to the economic outlook remain” because of the pandemic. The central bank left its benchmark short-term rate near zero, where it’s been since the pandemic erupted nearly a year ago, to help keep loan rates down to encourage borrowing and spending. It also said in a statement after its latest policy meeting that it would keep buying $120 billion in bonds each month to try to keep longer-term borrowing rates low. The U.S. economy has been posting unexpectedly strong gains in recent weeks, with barometers of hiring, spending and manufacturing all surging. Most economists say they detect the early stages of what could be a robust and sustained recovery, with coronavirus case counts declining, vaccinations rising and Americans spending their stimulus-boosted savings.

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

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

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

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

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

Intuitively, it seems likely that less expensive inputs or lower wages would mean savings for firms to pass on to the consumers. But it turns out that inefficiencies and lack of competition in upstream markets have ripple effects that can harm everyone. In a competitive market, employers pay the market wage; when there are vacancies, a marginal increase in pay will follow so employers can fill those vacancies. Labor monopsonists have different incentives. If they raise pay to fill a marginal vacancy, they might also have to raise pay for their existing employees. The small increase in pay needed to attract one more worker could mean a massive swing in overall labor cost (Krueger 2017). So even if growth would generally be good for the company, they might not be able to add the workers they need specifically because of the special dynamics of controlling too much of the market. This is an extreme example, but the same general principle applies when employers have the market power to depress wages below competitive levels. When the marginal cost of filling vacancies and growing one’s business to efficient levels diverges from the firm’s individual incentives for doing so, firms are constricted and leave jobs unfilled. Constraining inputs like labor leads to constrained outputs, and if firms are producing less of the products that consumers want, then prices for those products go up. After all, supply constraints and price increases are two sides of the same coin, economically. Fewer workers ultimately means fewer goods, and fewer goods means higher prices for the limited amount of goods available.4 Over time, this problem is magnified because fewer workers are incentivized to enter the field at all. The supply of qualified workers will go down, further reducing the firm’s ultimate output below efficient levels. In the end, everyone suffers except the firm with market power, which captures outsized profits. Think: Why does America have a chronic undersupply of nurses or teachers, as well as stagnant wages (Council of Economic Advisers 2016)? In a competitive market, undersupply would lead to higher wages and increased entry to the field. If wages are inefficiently underpriced, we end up without enough nurses and ballooning healthcare costs. (Not to mention that, in the case of nurses, we end up with worse health outcomes for consumers!) This is part of the reason it is so problematic to interpret the consumer welfare standard to mean that short-term consumer prices are increased: presumed price effects could be irrelevant or misleading as to the overall effect on consumers. Antitrust enforcement is supposed to be dynamic and to be able to keep up with the state of economic theory.5 But this cross-pollination is not in evidence. For example, even though inefficiency anywhere in the supply chain leads to worse outcomes for consumers, product market cases outnumber labor market cases by a factor of nearly 15, and in mergers by closer to 35. Moreover, no recent merger has been blocked on the basis of labor market effects alone (Levi 1948, 540, fn10). A quick foray into how antitrust law has developed follows.

#### Employee welfare increases innovation---improves talent retention and productivity.

Yu Wei et al. 20. School of Finance, Yunnan University of Finance and Economics, Kunming, China. \*Haoxi Nan School of Economics and Management, Southwest Jiaotong University, Chengdu, China. \*Guiwu Wei School of Business, Sichuan Normal University, Chengdu, China. "The impact of employee welfare on innovation performance: Evidence from China's manufacturing corporations." Science Direct. October 2020. https://www.sciencedirect.com/science/article/pii/S0925527320301389

As innovation requires the active participation of every employee in the corporation (Dougherty, 1992; Van de Ven, 1986), it is important to increase employee participation in innovation activities. Implementing a series of employee-friendly policies, such as improving employee compensation (Mas, 2006), providing employees with a more comfortable working environment (Faleye and Trahan, 2011), and offering work-family benefits (Meyer et al., 2001), can alleviate employees’ worries, improve their recognition by the corporation, reduce the employee turnover rate and help retain outstanding talents. Therefore, employee welfare may enhance corporate innovation by helping the corporation to retain outstanding talents. Taylor (1911) points out that if employees are regarded as unskilled labor without special status, then employee welfare is a wasteful expenditure. However, with the development of technology and the corporations, the role of employees has also undergone tremendous changes. Highly competitive business environment and human capital-intensive corporation form force corporations to pay more attention to innovation capability (Edmans, 2011). At the same time, technological progress has also increased the demand for highly motivated and well-educated labors to meet the requirements of new technologies. Therefore, it is becoming more and more important to rely on a series of employee welfare policies, such as improving the working environment and enhancing employee treatment, to retain employees and stimulate their enthusiasm and creativity. As we all know, innovation is characterized by long-term and high risks (Holmstrom, 1989), which requires the long-term and stable participation of talented employees. The corporations can increase employee loyalty and productivity by improving employee benefits, such as generous salary, comfortable and safe working environment, good employee care and protection, and attractive retirement protection (Bloom et al., 2011), so as to retain talents for the corporation and attract excellent employees to join (Chen et al., 2016a). At the same time, employees who have solved their worries can increase their risk tolerance and be more willing to improve efficiency (Tian and Wang, 2011; Chen et al., 2016b). Therefore, employee welfare may enhance corporate innovation by improving the inventor efficiency. Innovation requires not only the long-term investment of corporates and the active participation of employees, but also a good external ecological environment. The attention and active publicity of news media will also have a significant impact on the innovation investment of corporates. Corporates with good employee welfare often enjoy good social reputation, which can attract more and better talents to join in and promote innovation efficiency. At the same time, they can also get more positive reports from the media (Ben-Nasr and Ghouma, 2018), creating a relaxed and harmonious external environment for corporates, leading to the improvement of corporates innovation level.

#### Slow growth collapses the liberal order AND causes global hotspot escalation---extinction.

Michael Oppenheimer 21. Clinical Professor, Center for Global Affairs, New York University. Senior Consulting Fellow, Scenario Planning at the International Institute for Strategic Studies. Former Executive Vice President, The Futures Group. Member, Council on Foreign Relations. Member, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs. Member, The American Council on Germany, The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction. “The Turbulent Future of International Relations.”

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade. Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president.7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9 But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10 Secular Stagnation This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains: …rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result. Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth… This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible. …in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development. Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12 The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates. Illiberal Globalization Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically proTrump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them. What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18 As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods: We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20 The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the preWorld War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present: Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago. …In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports. …The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable. …the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry. Multipolarity We can define multipolarity as a wide distribution of power among multiple independent states. Exact equivalence of material power is not implied. What is required is the possession by several states of the capacity to coerce others to act in ways they would otherwise not, through kinetic or other means (economic sanctions, political manipulation, denial of access to essential resources, etc.). Such a distribution of power presents inherently graver challenges to peace and stability than do unipolar or bipolar power configurations,22 though of course none are safe or permanent. In brief, the greater the number of consequential actors, the greater the challenge of coordinating actions to avoid, manage, or de-escalate conflicts. Multipolarity also entails a greater potential for sudden changes in the balance of power, as one state may defect to another coalition or opt out, and as a result, the greater the degree of uncertainty experienced by all states, and the greater the plausibility of downside assumptions about the intentions and capabilities of one’s adversaries. This psychology, always present in international politics but particularly powerful in multipolarity, heightens the potential for escalation of minor conflicts, and of states launching preventive or preemptive wars. In multipolarity, states are always on edge, entertaining worst-case scenarios about actual and potential enemies, and acting on these fears—expanding their armies, introducing new weapon systems, altering doctrine to relax constraints on the use of force—in ways that reinforce the worst fears of others. The risks inherent in multipolarity are heightened by the attendant weakening of global institutions. Even in a state-centric system, such institutions can facilitate communication and transparency, helping states to manage conflicts by reducing the potential for misperception and escalation toward war. But, as Waheguru Pal Singh Sidhu argues in his chapter on the United Nations, the influence of multilateral institutions as agent and actor is clearly in decline, a result of bottom-up populist/nationalist pressures experienced in many countries, as well as the coordination problems that increase in a system of multiple great powers. As conflict resolution institutions atrophy, great powers will find themselves in “security dilemmas”23 in which verification of a rival’s intentions is unavailable, and worst-case assumptions fill the gap created by uncertainty. And the supply of conflicts will expand as a result of growing nationalism and populism, which are premised on hostility, paranoia, and isolation, with governments seeking political legitimacy through external conflict, producing a siege mentality that deliberately cuts off communication with other states. Finally, the transition from unipolarity (roughly 1989–2007) to multipolarity is unregulated and hazardous, as the existing superpower fears and resists challenges to its primacy from a rising power or powers, while the rising power entertains new ambitions as entitlements now within its reach. Such a “power transition” and its dangers were identified by Thucydides in explaining the Peloponnesian Wars,24 by Organski (the “rear-end collision”)25 during the Cold War, and recently repopularized and brought up to date by Graham Allison in predicting conflict between the US and China.26 A useful, and consequential illustration of the inherent challenge of conflict management during a power transition toward multipolarity, is the weakening of the arms control regime negotiated by the US and the Soviet Union during the Cold War. Despite the existential, global conflict between two nuclear armed superpowers embracing diametrically opposed world views and operating in economic isolation from each other, the two managed to avoid worst-case outcomes. They accomplished this in part by institutionalizing verifiable limits on testing and deployment of both strategic and intermediate-range nuclear missiles. Yet as diplomatically and technically challenging as these achievements were, the introduction of a third great power, China, into this twocountry calculus has proven to be a deal breaker. Unconstrained by these bilateral agreements, China has been free to build up its capability, and has taken full advantage in ramping up production and deployment of intermediate-range ground-launched cruise missiles, thus challenging the US ability to credibly guarantee the security of its allies in Asia, and greatly increasing the costs of maintaining its Asian regional hegemony. As a result, the Intermediate Nuclear Force treaty is effectively dead, and the New Start Treaty, covering strategic missiles, is due to expire next year, with no indication of any US–Russian consensus to extend it. The US has with logic indicated its interest in making these agreements trilateral; but China, with its growing power and ambition, has also logically rejected these overtures. Thus, all three great powers are entering a period of nuclear weapons competition unconstrained by the major Cold War arms control regimes. In a period of rapid advances in technology and worsening great power relations, the nuclear competition will be a defining characteristic of the next decade and beyond. This dynamic will also complicate nuclear nonproliferation efforts, as both the demand for nuclear weapons (a consequence of rising regional and global insecurity), and supply of nuclear materials and technology (a result of the weakening of the nonproliferation regime and deteriorating great power relations) will increase. Will deterrence prevent war in a world of several nuclear weapons states, (the current nuclear powers plus South Korea, Iran, Saudi Arabia, Japan, Turkey), as it helped to do during the bipolar Cold War? Some neorealist observers view nuclear weapons proliferation as stabilizing, extending the balance of terror, and the imperative of restraint, to new nuclear weapons states with much to fight over (Saudi Arabia and Iran, for example).27 Others,28 examining issues of command and control of nuclear weapons deployment and use by newly acquiring states, asymmetries in doctrines, force structures, and capabilities between rivals, the perils of variable rates in transition to weapons deployment, problems of communication between states with deep mutual grievances, the heightened risk of transfer of such weapons to non-state actors, have grave doubts about the safety of a multipolar, nuclear-armed world.29 We can at least conclude that prudence dictates heightened efforts to slow the pace of proliferation, while realism requires that we face a proliferated future with eyes wide open. The current distribution of power is not perfectly multipolar. The US still commands the world’s largest economy, and its military power is unrivaled by any state or combination of states. Its population is still growing, despite a recent decline in birth rates. It enjoys extraordinary geographic advantages over its rivals, who are distant and live in far worse neighborhoods. Its economy is less dependent on foreign markets or resources. Its political system has proven—up to now—to be resilient and adaptable. Its global alliance system greatly extends its capacity to defend itself and shape the world to its liking and is still intact, despite growing doubts about America’s reliability as a security guarantor. Based on these mostly material and historical criteria, continued American primacy would seem to be a good bet, if it chooses to use its power in this way.30 So why multipolarity? The clearest and most frequently cited evidence for a widening distribution of global power away from American unipolarity is the narrowing gap in GDP between the US and China. The IMF’s World Economic Outlook forecasts a $0.9 trillion increase in US GDP for 2019–2020, and a $1.3 trillion increase for China in the same period.31 Many who support the American primacy case argue that GDP is an imperfect measure of power, that Chinese GDP data is inflated, that its growth rates are in decline while Chinese debt is rapidly increasing, and that China does poorly on other factors that contribute to power—its low per capita GDP, its political succession challenges, its environmental crisis, its absence of any external alliance system. Yet GDP is a good place to start, as the single most useful measure and long-term predictor of power. It is from the overall economy that states extract and apply material power to leverage desired behavior from other states. It is true that robust future Chinese growth is not guaranteed, nor is its capacity to convert its wealth to power, which is a function of how well its political system works over time. But this is equally the case for the US, and considering recent political developments is not a given for either country. As an alternative to measuring inputs—economic size, political legitimacy, technological innovation, population growth—in assessing relative power and the nature of global power distribution, we should consider outputs: what are states doing with their power? The input measures are useful, possibly predictive, but are usually deployed in the course of making a foreign policy argument, sometimes on behalf of a reassertion of American primacy, sometimes on behalf of retrenchment. As such, their objectivity (despite their generous deployment of “data”) is open to question. What is undeniable, to any clear-eyed observer, is a real decline in American influence in the world, and a rise in the influence of other powers, which predates the Trump administration but has accelerated into America’s free fall over the last four years. This has produced a de facto multipolarity, whether explainable in the various measures of power—actual and latent—or not. This decline results in part from policy mistakes: a reckless squandering of material power and legitimacy in Iraq, an overabundance of caution in Syria, and now pure impulsivity. But more fundamentally, it is a product of relative decline in American capacity—political and economic—to which American leadership is adjusting haphazardly, but in the direction of retrenchment/restraint. It is highly revealing that the last two American presidents, polar opposites in intellect, temperament and values, agreed on one fundamental point: the US is overextended, and needs to retrench. The fact that neither Obama nor Trump (up to this point in his presidency) believed they had the power at their disposal to do anything else, tells us far more about the future of American power and policy—and about the emerging shape of international relations—than the power measures and comparisons made by foreign policy advocates. Observation of recent trends in US versus Russian relative influence prompts another question: do we understand the emerging characteristics of power? Rigorously measuring and comparing the wrong parameters will get us nowhere at best and mislead us into misguided policies at worst. How often have we heard, with puzzlement, that Putin punches far above his weight? Could it be that we misunderstand what constitutes “weight” in the contemporary and emerging world? Putin may be on a high wire, and bound to come crashing down; but the fact is that Russian influence, leveraging sophisticated communications/social media/influence operations, a strong military, an agile (Putin-dominated) decision process, and taking advantage of the egregious mistakes by the West, has been advancing for over a decade, shows no sign of slowing down, and has created additional opportunities for itself in the Middle East, Europe, Asia, Latin America, the Arctic. It has done this with an economy roughly the size of Italy’s. There are few signs of a domestic political challenge to Putin. His external opponents are in disarray, and Russia’s main adversary is politically disabled from confronting the problem. He has established Russia as the Middle East power broker. He has reached into the internal politics of his Western adversaries and influenced their leadership choices. He has invaded and absorbed the territory of neighboring states. His actions have produced deep divisions within NATO. Again, simple observation suggests multipolarity in fact, and a full explanation for this power shift awaiting future historians able to look with more objectivity at twenty-first-century elements of power. When that history is written, surely it will emphasize the extraordinary polarization in American politics. Was multipolarity a case of others finding leverage in new sources of power, or the US underutilizing its own? The material measures suggest sufficient capacity for sustained American primacy, but with this latent capacity unavailable (as perceived, I believe correctly, by political leadership) by virtue of weakening institutions: two major parties in separate universes; a winnertake-all political mentality; deep polarization between the parties’ popular bases of support; divided government, with the Presidency and the Congress often in separate and antagonistic hands; diminishing trust in the permanent government, and in the knowledge it brings to important decisions, and deepening distrust between the intelligence community and policymakers; and, in Trump’s case, a chaotic policy process that lacks any strategic reference points, mis-communicates the Administration’s intentions, and has proven incapable of sustained, coherent diplomacy on behalf of any explicit and consistent set of policy goals. Rising Nationalism/Populism/Authoritarianism The evidence for these trends is clear. Freedom House, the go-to authority on the state of global democracy, just published its annual assessment for 2020, and recorded the fourteenth consecutive year of global democratic decline and advancing authoritarianism. This dramatic deterioration includes both a weakening in democratic practice within states still deemed on balance democratic, and a shift from weak democracies to authoritarianism in others. Commitment to democratic norms and practices—freedom of speech and of the press, independent judiciaries, protection of minority rights—is in decline. The decline is evident across the global system and encompasses all major powers, from India and China, to Europe, to the US. Right-wing populist parties have assumed power, or constitute a politically significant minority, in a lengthening list of democratic states, including both new (Hungary, Poland) and established (India, the US, the UK) democracies. Nationalism, frequently dismissed by liberal globalization advocates as a weak force when confronted by market democracies’ presumed inherent superiority, has experienced a resurgence in Russia, China, the Middle East, and at home. Given the breadth and depth of right-wing populism, the raw power that promotes it—mainly Russian and American—and the disarray of its liberal opponents, this factor will weigh heavily on the future. The major factors contributing to right-wing populism and its global spread is the subject of much discussion.32 The most straightforward explanation is rising inequality and diminished intergenerational mobility, particularly in developed countries whose labor-intensive manufacturing has been hit hardest by the globalization of capital combined with the immobility of labor. Jobs, wages, economic security, a reasonable hope that one’s offspring has a shot at a better life than one’s own, the erosion of social capital within economically marginalized communities, government failure to provide a decent safety net and job retraining for those battered by globalization: all have contributed to a sense of desperation and raw anger in the hollowed-out communities of formerly prosperous industrial areas. The declining life expectancy numbers33 tell a story of immiseration: drug addition, suicide, poor health care, and gun violence. The political expression of such conditions of life should not be surprising. Simple, extremist “solutions” become irresistible. Sectarian, racial, regional divides are strengthened, and exclusive identities are sharpened. Political entrepreneurs offering to blow up the system blamed for such conditions become credible. Those who are perceived as having benefited from the corrupt system—long-standing institutions of government, foreign countries and populations, immigrants, minorities getting a “free ride,” elites—become targets of recrimination and violence. The simple solutions of course, don’t work, deepening the underlying crisis, but in the process politics is poisoned. If this sounds like the US, it should, but it also describes major European countries (the UK, France, Italy, Germany, Poland, Hungary, the Czech Republic), and could be an indication of things to come for non-Western democracies like India. We have emphasized throughout this chapter the interaction of four structural forces in shaping the future, and this interaction is evident here as well. Is it merely coincidence that the period of democratic decline documented by Freedom House, coincides precisely with the global financial and economic crisis? Lower growth, increasing joblessness, wage stagnation, superimposed on longer-term widening of inequality and declining mobility, constitute a forbidding stress test for democratic systems, and many continue to fail. And if we are correct about secular stagnation, the stress will continue, and authoritarianism’s fourteen-year run will not be over for some time. The antidemocratic trend will gain additional impetus from the illiberal direction of globalization, with its growth suppressing protectionism, weaponization of global economic exchange, and weakening global economic institutions. Multipolarity also contributes, in several ways. The former hegemon and author of globalization’s liberal structure has lost its appetite, and arguably its capacity, for leadership, and indeed has become part of the problem, succumbing to and promoting the global right-wing populist surge. It is suffering an unprecedented decline in life expectancy, and recently a decline in the birth rate, signaling a degree of rot commonly associated with a collapsing Soviet Union. While American politics may once again cohere around its liberal values and interests, the time when American leadership had the self-confidence to shape the global system in its liberal image is gone. It may build coalitions of the like-minded to launch liberal projects, but there will be too much power outside these coalitions to permit liberal globalization of the sort imagined at the end of the Cold War. In multipolarity, the values around which global politics revolve will reflect the diversity of major powers, their interests, and the norms they embrace. Convergence of norms, practices, policies is out of the question. Global collective action, even in the face of global crises, will be a long shot. To expect anything else is fantasy Unbrave New World and Future Challenges At the outset of this chapter we described these structural forces as interacting to produce more conflict and diminished prosperity. We also predicted a world with shrinking collective capacity to address new challenges as they arise. What specifically will such a world look like? We address below three principal challenges to global problem solving over the next decade. Interstate Conflict In the world experienced by most readers of this volume, conflict is observed within weak states, sometimes promoted by regional competitors, by terrorist groups, or by great powers, acting through surrogates or by indirect means. Sometimes, as in Syria, this conflict spills over to contiguous states and contributes to regional instability, and challenges other regions to respond effectively, a challenge that Europe has not met. Much of this will continue, but the global significance of such local conflicts will be greatly magnified by increasing great power conflict, which will feed—rather than manage or resolve—local instabilities and will in turn be exacerbated by them. Great powers will jockey for advantage, support their local partners, escalate preemptively. Conflicts initially confined to failing states or unstable regions will be redefined by great powers as global in scope and significance. This tendency of states to view local conflicts in the context of a zero-sum, global struggle for power is familiar to students of the Cold War, but now with the additional challenges to collective action, expanded uncertainty and worst-case thinking associated with the power transition to multipolarity. We can easily observe increased conflict in US–China relations, as we will in US–Russia relations as future US administrations try to make up for ground lost during the Trump presidency, especially in the Middle East. We can observe it among powerful states with mutual historical grievances, now with a weakening presence of the hegemonic security guarantor and having to consider the renationalization of their defense: Japan-South Korea, Germany-France. We can observe it among historical rivals operating in rapidly changing security landscapes: India-China. We can observe it within the Middle East, as internal rivalries are appropriated by regional powers in a contest for regional dominance. We can observe it clearly in Syria, where the regime’s violent suppression of Arab Spring resistance led to all-out civil war, attracted outside support to proxy forces by aspiring regional hegemons Saudi Arabia and Iran, enabled the rise of ISIS, and eventually to great power intervention, principally by Russia. In a world of effective great power collaboration or American primacy, the Syrian civil war might have been settled through power sharing or partition, or if not, contained within Syria. The collapse of Yugoslavia, occurring during a period of US “unipolarity” and managed effectively, demonstrates the possibilities. Instead, with the US retrenching, Middle East rivals unconstrained by great powers, and great power competition rising, the Syria civil war was fed by outside powers, then metastasized into the region, and—in the form of refugee flows—into Europe, fundamentally altering European politics. Libya may be at the early stages of this scenario. This is not the end of the Syria story. Russia has established itself as a major player in Syria and the Middle East’s power broker, the indispensable country with leverage throughout the region. China is poised to reap the financial and power benefits of Syrian reconstruction. The US has just demonstrated, in its act of war against the Iranian regime, its willingness, without consultation, to put its allies’ security in further jeopardy, accentuating the risks of security ties with Washington and generating added opportunities for Russia and China. The purpose here is not to critique US policy, but to point out the dramatically shifting power balance in a critical region, toward multipolarity. The dangers of such a shift will become apparent as some future US president attempts to reassert US influence in the region and finds a crowded playing field. Can a multipolar distribution of power among several states whose interests, values, and political practices are divergent, all experiencing bottom-up nationalist pressures, all seeking advantages in the oversupply of regional instability, be made to work? I think not. Will this more dangerous world descend into direct military confrontation between great powers, and could such confrontation lead to use of nuclear weapons? Here the question becomes, what will this more dangerous world actually look like; what instruments of coercion will be available to states as technology change accelerates; how will states employ these instruments; how will deterrence work (if at all) among several states with large but unequal levels of destructive capacity, weak command, and control, disparate— or opaque—strategies and simmering rivalries; can conflict management work in a world of weak institutions? The collapse of the Cold War era nuclear arms control regime, the threat to the Non-Proliferation Treaty represented by the demise of the JCPOA, and multiple indications of an accelerating nuclear arms race among the three principle powers, augurs badly. Given the structural forces at play, and without predicting the worst, we are indeed entering perilous times. Global Poverty and Inequality Despite the challenges of volatility and disruptive change inherent in globalization, the world under American liberal leadership has managed a dramatic reduction of extreme poverty. According to World Bank estimates, in 2015, 10 percent of the world’s population lived on less than $1.90 a day, down from nearly 36 percent in 1990.34 In fact, as of September 2018, half the world is now middle class or wealthier.35 The uneven success of the UN Millennium Development Goals (MDGs) exemplifies this achievement, and demonstrates what is possible when open markets are managed through strong global institutions, effective leadership and interstate collaboration. What this liberal hegemonic system did not achieve, however, was a fair distribution of the gains from globalization within states, and among those states that for various reasons were not full participants in this system. This record of partial achievement leaves us with a full agenda for the next fifteen years, but without the hegemonic leadership, strong institutions, ascendant liberalism or robust global growth that enabled previous gains. There are powerful reasons to question the sustainability of these poverty reduction gains, leading to doubts about the realization of the Sustainable Development Goals, which have replaced the MDGs as global development targets.36 (See Jens Rudbeck’s chapter and Sidhu’s UN chapter for SDGs). Skeptics have pointed to slowing global growth, specifically in China, whose demand for imported commodities was a major factor in developing country growth and job creation; growing protectionism in developed country markets, fueled by bottom-up forces of nationalism, and from top-down by a weakened global trading regime and increased geopolitical rivalry; the effects of accelerating climate change on agriculture, migration and communal conflict in poor countries; and the growth burst among poor countries from the rapid transition to more efficient use of resources, a transition that is now slowing down.37 Perhaps the greatest concern in this scenario is a general deterioration in the developing country foreign investment climate. Foreign direct investment (FDI) has been a major contributor to growth, job creation, and poverty alleviation among poor countries. It has incentivized growthfriendly policies, reduced corruption, introduced technology and effective management practices, and linked poor countries to foreign markets through global supply chains.38 It has stimulated growth of indigenous manufacturing and service companies to supply new foreign investments. It has been the major cause of economic convergence between rich and poor countries. From 2000 to 2009, developing economies’ growth rates were more than four percentage points higher than those of rich countries, pushing their share of global output from just over a third to nearly half.39 However, FDI flows into poor countries are imperiled by the structural forces discussed here. Political instability arising from slower growth and environmental stress will increase investors’ perception of higher risk, reinforcing their developed country bias. Protectionism among developed countries will threaten the global market access upon which manufacturing investment in developing countries is premised, causing firms to pare back their global supply chains. As companies retrench from direct investment in poor countries, the appeal to those countries of Chinese debt financed infrastructure projects, under the Belt-Road Initiative with little or no conditionality, but at the risk of “debt traps,” will increase. Global Warming The question posed at the beginning of this section is whether the international system, evolving toward multipolarity and rising nationalism, will find the collective political capital to confront challenges as they arise. Global warming is the mother of all challenges, and the weakness in the system’s capacity to respond is clear. With the two major political/economic powers and greenhouse gas emitters locked in deepening geopolitical conflict (and with one of them locked in climate change denial, possibly through 2024), the chances of significantly slowing global warming or even ameliorating its effects are very slim. We are reduced to the default option, nation-specific adaptation to climate change, which will impose rising human, political and economic costs on all, and will widen the gap between rich countries with adaptive capacity (of varying degrees), and the poor, who will suffer deteriorating economic, political, and social conditions. (For a contrary, optimistic view see Michael Shank’s chapter, which credits new actors—like cities—as playing a more constructive role in climate mitigation.) This would bring to a close liberal globalization’s greatest achievement; the raising of 1.1 billion people out of extreme poverty since 1990,40 with all its associated gains in quality of life (in the WHO Africa region, for example, life expectancy rose by 10.3 years between 2000 and 2016, driven mainly by improvements in child survival and expanded access to antiretrovirals for treatment of HIV).41 Several forces are at work here. The problem itself is graver—in magnitude and in rate of worsening—than predicted by climate scientists. The UN Intergovernmental Panel on Climate Change (IPCC), the major source of information on global warming, has consistently underpredicted the rate of climate deterioration. This holds true even for its “worst-case scenarios,” meaning that what was meant as a wake-up call has in fact reinforced complacency.42 (see Michael Shank’s chapter for further discussion of climate change). The IPCC, in its 2019 report, has tried to undo the damage by emphasizing the acceleration in the rate of warming and its effects, the only partially understood dynamic of climate change, and—given wide uncertainty—the possibility of unpleasant surprises yet to come. This strengthens the scientific case for urgency—to both severely limit greenhouse gas emissions, and to increase investment in ameliorating the effects. Unfortunately, the crisis comes at a moment when the climate for collective action is ice cold. Geopolitical competition incentivizes states to out produce each other, regardless of the environmental effects. Multipolarity complicates collective action. Economic stagnation mandates job creation, making regulation politically toxic. Bottom-up nationalism/populism causes states to pursue “relative gains,” meaning that if the nation is seen as gaining in a no-holds-barred economic competition with others, the negative environmental effects can be tolerated. A post-Trump presidency would help, with the US rejoining the Paris Agreement, and lending its weight to tighter regulation, increased R and D, and stronger economic incentives to reduce carbon emissions. Keep in mind, however, that President Obama was fully behind such efforts, but in a deeply polarized America was unable to implement measures needed to fulfill the Paris obligations through legislation, and his executive orders to do this were swiftly overturned by Trump. Conclusion It may be tempting to hope that post-Trump, the US can regain its global leadership and exert its considerable power in a liberal direction, but with enough self-awareness of its relative decline to share responsibility with others. This was, I believe, the broad direction of the Obama strategy, evidenced by the JCPOA and the Trans-Pacific Partnership: liberal, collective solutions to global problems, as US dominance receded. This would constitute an optimistic scenario, and it confronts two major problems: can US internal politics support it (can, for example, the country legislate controls on carbon, essential for the global credibility and durability of such commitments); and is the world ready to reengage with American leadership, given the damage to its reputation and the structural forces discussed in this chapter? My educated guess is no, on both counts. The rot within is extensive, the concrete evidence clear in the economic inequality/immobility numbers, the life expectancy numbers, the deep political polarization, between the two major parties, between regions, between cities and rural areas. We are in fact a long way from fitness for global leadership, and the recognition of this by others will accelerate the decline of American influence. The rest of the world is well on its way toward adjusting to post-American hegemony, some by renationalizing their defense, or by cutting deals with adversaries, by building new alliances or by seizing new opportunities for influence in the vacuum left by American retrenchment. The evidence for this will accumulate. Observe the current and emerging Middle East, where all these post-hegemonic strategies are visible.

#### It overcomes traditional barriers to conflict.

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

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, there are growing concerns about the increased possibility of large-scale military conflict. More worryingly, in the current political landscape, prolonged economic crisis, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could easily spin out of control and ‘morph’ into military conflict, and worse, world war. Crisis responses limited The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates. But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms. Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy. From bust to bubble Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression. As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy. The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to foment unrest, conflict, even war as it is blamed on the foreign. International trade shrank by two-thirds within half a decade after the US passed the Smoot-Hawley Tariff Act in 1930, at the start of the Great Depression, ostensibly to protect American workers and farmers from foreign competition! Liberalization’s discontents Rising economic insecurity, inequalities and deprivation are expected to strengthen ethno-populist and jingoistic nationalist sentiments, and increase social tensions and turmoil, especially among the growing precariat and others who feel vulnerable or threatened.Thus, ethno-populist inspired chauvinistic nationalism may exacerbate tensions, leading to conflicts and tensions among countries, as in the 1930s. Opportunistic leaders have been blaming such misfortunes on outsiders and may seek to reverse policies associated with the perceived causes, such as ‘globalist’ economic liberalization. Policies which successfully check such problems may reduce social tensions, as well as the likelihood of social turmoil and conflict, including among countries. However, these may also inadvertently exacerbate problems. The recent spread of anti-globalization sentiment appears correlated to slow, if not negative per capita income growth and increased economic inequality. To be sure, globalization and liberalization are statistically associated with growing economic inequality and rising ethno-populism. Declining real incomes and growing economic insecurity have apparently strengthened ethno-populism and nationalistic chauvinism, threatening economic liberalization itself, both within and among countries. Insecurity, populism, conflict Thomas Piketty has argued that a sudden increase in income inequality is often followed by a great crisis. Although causality is difficult to prove, with wealth and income inequality now at historical highs, this should give cause for concern. Of course, other factors also contribute to or exacerbate civil and international tensions, with some due to policies intended for other purposes. Nevertheless, even if unintended, such developments could inadvertently catalyse future crises and conflicts. Publics often have good reason to be restless, if not angry, but the emotional appeals of ethno-populism and jingoistic nationalism are leading to chauvinistic policy measures which only make things worse. At the international level, despite the world’s unprecedented and still growing interconnectedness, multilateralism is increasingly being eschewed as the US increasingly resorts to unilateral, sovereigntist policies without bothering to even build coalitions with its usual allies. Avoiding Thucydides’ iceberg Thus, protracted economic distress, economic conflicts or another financial crisis could lead to military confrontation by the protagonists, even if unintended. Less than a decade after the Great Depression started, the Second World War had begun as the Axis powers challenged the earlier entrenched colonial powers. They patently ignored Thucydides’ warning, in chronicling the Peloponnesian wars over two millennia before, when the rise of Athens threatened the established dominance of Sparta! Anticipating and addressing such possibilities may well serve to help avoid otherwise imminent disasters by undertaking pre-emptive collective action, as difficult as that may be.

#### Income inequality is high---wage growth is artificial---only the plan solves.

Lawrence Mishel & Jori Kandra 12/13. \*\*Distinguished fellow at the Economic Policy Institute, served as president from 2002–2017. \*\*Research assistant at the Economic Policy Institute. “Wage inequality continued to increase in 2020.” 12/13/21. https://www.epi.org/blog/wage-inequality-continued-to-increase-in-2020-top-1-0-of-earners-see-wages-up-179-since-1979-while-share-of-wages-for-bottom-90-hits-new-low/

Newly available wage data from the Social Security Administration allow us to analyze wage trends for the top 1.0% and other very high earners as well as for the bottom 90% during 2020. The upward distribution of wages from the bottom 90% to the top 1.0% that was evident over the period from 1979 to 2019 was especially strong in the 2020 pandemic year, yielding historically high wage levels and shares of all wages for the top 1.0% and 0.1%. Correspondingly, the share of wages earned by the bottom 95% fell in 2020.

Two features of the pandemic economy distorted wage patterns in 2020 and led to faster wage growth, especially at the top. One feature was that inflation grew at a subdued 1.2% rate, boosting the average real wage (but not affecting distribution). A second feature was that, as employment fell (the number of earners fell by 1.7 million, or 1.6%) and unemployment rose (to 8.1%), the composition of the workforce changed. Specifically, job losses were heaviest for lower wage workers so the mix of jobs shifted toward higher paying ones, artificially boosting average wages (see Gould) and generating faster measured wage growth especially in the bottom half.

For last year, the data (Table 1) show annual wages rising fastest for those in the top 1.0% (up 7.3%) and top 0.1% (up 9.9%) while those in the bottom 90% saw wages grow by just 1.7%.

This continuous growth of wage inequality undercuts wage growth for the bottom 90% and reaffirms the need to place generating robust wage growth for the vast majority and rebuilding worker power at the center of economic policymaking. See Mishel and Bivens (2021) for the evidence that an erosion of worker power due to excessive unemployment, eroded collective bargaining, corporate-driven globalization, weaker labor standards, new employer-mandated agreements (such as noncompetes), and supply-chain dominance explains wage suppression and wage inequality growth.

#### Studies to the contrary are lobbyist hype.

Kate Kaye 20. Award-winning multimedia journalist who has chronicled the evolution of digital media, data use and technology. "In Portland Debate, Facial Recognition Giants Hide Behind Tech Lobby Think Tank". No Publication. 2-2-2020. https://redtailmedia.org/2020/01/20/in-portland-debate-facial-recognition-giants-hide-behind-tech-lobby-think-tank/

Enter Information Technology and Innovation Foundation and its article in the state’s biggest newspaper. ITIF may not be well-known in Rip City, but the think tank is led by lobbyists working for some of tech’s best-known names – many of which would benefit from the proliferation of facial recognition.

Several ITIF board members are lobbyists for the biggest facial recognition players:

* Frederick Humphries, Jr, VP government affairs for Microsoft
* Cynthia Hogan, VP public policy for Apple
* Shannon Kellogg, VP of public policy for Amazon
* Jason Oxman, president and CEO of tech industry trade group International Technology Industry Council (members include Amazon, Google, Facebook and IBM)

Google lists ITIF among groups “that receive the most substantial contributions from Google’s U.S. Government Affairs and Public Policy team.” This 2017 Gizmodo article by Libby Watson provides a good roundup of the group’s funding, and its efforts to squelch regulations it views as anti-tech.

Daniel Castro, ITIF’s vice president said the group’s analyst team operates separately from its board as well as its development and fundraising staff. “I don’t even really interact with our board,” he said. “They don’t peer over our shoulders and get advanced copies of what we are going to say.”

The group will not name specific funders. Jackie Whisman, ITIF’s VP of development and outreach said in an email ITIF funding comes from “a diverse range of corporations, charitable foundations, government agencies, and individual contributors” and “corporate support comes from a diverse range of industries, including everything from advanced manufacturing to telecommunications, creative content, IT hardware, software and services, Internet, and life sciences.”

Winning Hearts and Minds

A quick search shows ITIF has been in the business of facial recognition influence peddling since at least 2018. The group has placed opinion articles in publications warning that facial recognition bans will hinder safety and stifle innovation. Its Vice President Daniel Castro gave testimony at a House Oversight Committee hearing on facial recognition technology the same day the Oregonian article ran.

The group joined a coalition of tech and security entities that sent an open letter to Congress in September. The letter’s message reflected the one in the Oregonian article, and noted that “Bans would keep this important tool out of the hands of law enforcement officers, making it harder for them to do their jobs efficiently, stay safe, and protect our communities.”

ITIF’s Oregonian article also argues that facial recognition is a helpful security tool. “One of the top benefits of facial recognition technology is improved public safety.”

Perhaps the most ardent supporter in local government of a ban has been Portland City Commissioner Jo Ann Hardesty (above). She told RedTail last year she believed outlawing government, police and private use of facial recognition would prevent the spread of tech that has a disparate impact on people of color. She also argued use of facial recognition technology by law enforcement could chip away at civil liberties and data privacy rights.

The Problem with Taking Research at Face Value

The ITIF column implies that city government’s evaluation of a facial recognition ban, particularly in the law enforcement context, is influenced by “inaccurate claims about the technology.” It mentions how some concern about facial recognition is based on an American Civil Liberties Union study which found that Amazon’s Rekognition software incorrectly identified 28 members of Congress as people who had been arrested for crimes.

ITIF argues, the ACLU’s “results have been shown to be spurious.” The article points to Amazon’s own defense against the ACLU’s findings. Amazon — a close affiliate of ITIF and a prominent facial recognition tech developer — said the ACLU’s test results were moot because the civil liberties defender did not apply the appropriate settings recommended by Amazon for public safety use of its system.

But, after damning the ACLU’s research, The ITIF article goes on to cite its own. And its interpretation of that research warrants some inspection. The article states:

“It is likely that the majority of Portlanders would not want the technology banned. In fact, a poll conducted by our partner organization found that fewer than one in five Americans agree with limitations on facial recognition technology that come at the expense of public safety, which clearly a ban would do.”

The “partner organization” that conducted the study is the Center for Data Innovation. Its top senior staff? Daniel Castro, ITIF’s own vice president, along with Eline Chivot, senior policy analyst for both organizations. In other words, for all intents and purposes, ITIF is citing its own study, one it conducted under the auspices of its closely-linked sibling.

The survey used in the study asked, “Agree or disagree? The government should strictly limit the use of facial recognition technology even if it comes at the expense of public safety.” Eighteen percent of respondents said they strongly or somewhat agree, while 55% said they somewhat or strongly disagree.

This 18% is what ITIF refers to in the article’s claim that “fewer than one in five Americans” is OK with limiting facial recognition even if it hinders public safety.

center\_data\_innovation\_facialrecog\_study2

But 18+55=73. What happened to the remaining 27%?

The study results show that portion of respondents neither agreed nor disagreed with the statement. And the organization’s own chart highlighting results ignores this group entirely. But consider an interpretation combining those groups – the 18% who agree and the 27% who are unsure. That makes for a far more significant 45% who either agree or are unsure.

Policy through Honesty and Transparency

So, here we have instances of two organizations on opposite sides conducting their own research to support their opposing sides of a highly-contested debate that affects how governments craft policy for technologies that have life-altering impacts.

There is facial recognition research out there that is respected by both researchers in corporate tech and privacy and civil liberties groups; that’s the research provided by the National Institutes of Standards and Technology. In December, NIST finally published its long-awaited study of facial recognition algorithms and their demographic effects.

Scientific American’s coverage of the NIST study notes, “many of these algorithms were 10 to 100 times more likely to inaccurately identify a photograph of a black or East Asian face, compared with a white one. In searching a database to find a given face, most of them picked incorrect images among black women at significantly higher rates than they did among other demographics.”

No matter what side we’re on, we should all want reliable research when it comes to evaluating automated systems that could be used to decide if someone is arrested or if someone is allowed in a convenience store like the Jacksons in SE Portland (more on that here and in this video).

Like many others, this situation illustrates the need for media literacy. The NIST research itself states that “Reporting of demographic effects often has been incomplete in academic papers and in media coverage.” One glance at NIST’s most recent research illustrates the deep complexity of facial recognition, the issues it raises and the limits of splashy headlines, soundbytes and tweets.

We are immersed in an increasingly muddled information landscape where few people have the inclination or media literacy tools to inspect who’s behind the “expert” opinions offered in the local paper. But these opinions could sway attitudes about important government policy.

A discussion involving multiple voices and opinions is healthy. However, the conversation around Portland’s potential facial recognition ban is corrupted when tech giants seek to influence it by hiding behind the cloak of a seemingly impartial third party.

#### They’re paid off by big tech.

Debra Kaufman 20. "Amazon, Google, Qualcomm Support Global Antitrust Institute". ETCentric. 7-28-2020. https://www.etcentric.org/amazon-google-qualcomm-support-global-antitrust-institute/

Last year, the Global Antitrust Institute, part of the Antonin Scalia Law School at George Mason University, organized and paid for a weeklong conference in California for antitrust regulators from 30 foreign countries, including Australia, Brazil, China and Japan. At the conference, these officials attended classes that were described as continuing education to learn more about the economic foundation of competition regulations. According to attendees and critics, however, the message of the conference also benefited Big Tech companies.

The New York Times reports that, “the sessions were more about delivering a clear message to international officials that benefited the companies paying for the event … [that] the best way to foster competition is to maintain a hands-off approach to antitrust law.”

Among the companies supporting the event were Amazon, Google, Qualcomm and other Big Tech firms facing antitrust probes, all of them major corporate donors to the Global Antitrust Institute. In researching documents, NYT found “donation checks for hundreds of thousands of dollars from Google and Amazon, as well as a three-year, multimillion-dollar donation agreement from Qualcomm,” which were “a key component of the institute’s $2.1 million budget in the year that ended in June 2019.”

NYT found emails that “showed how the institute cultivated and tapped relationships with top competition officials” and that its director, Joshua Wright, “has longstanding ties to Google … [and has] worked closely with tech companies to fend off antitrust criticism.”

### FTC---1AC

#### Advantage 2 is the FTC---

#### FTC promised labor protection---they’ll lose now without congressional action.

Nicolás Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress. Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.) Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy. Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image. How the FTC can tackle antitrust To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices. But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years. A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.” The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down. How Congress can tackle antitrust The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google. Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage. Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### That decimates the FTC.

Marianela Lopez-Galdos 7/28/21. Global Competition Counsel at the Computer& Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines. It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust. What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril. The FTC’s Rulemaking Authority Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations. However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people. Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place. Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation. The Future of the FTC One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future. Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases. However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case. Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

#### Trust solves scams.

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

10. Trust the FTC. This final step informs all the others. There can be no doubt that there is more work to do protecting consumers than the FTC currently has the tools or resources to accomplish. There is also no doubt that the FTC has been trammeled in ways that its sister agencies, federal and state, have not. Whatever the reason, it is high time to retire the “zombie ideas” about the FTC – that the Commission is unnecessary, or overreaching, or heavy-handed, or inefficient.23 It is time, as one commissioner stated in Senate testimony last week, to “turn the page on the FTC’s perceived powerlessness.”24 For an American public eager for greater – not lesser – protection from increasingly sophisticated scam artists, deceptive advertisers, and privacy violating tech companies, building an effective FTC is an easy decision. It can and should be for this committee as well. IV. Conclusion This subcommittee meets at a remarkable historical moment, when the COVID-19 pandemic has revealed the profound need for a robust Federal Trade Commission just days after the Supreme Court made action by Congress an absolute necessity. This is a perilous time, with the chief protector of American consumers rendered nearly powerless just when those consumers are experiencing a heightened threat resulting from a once-in-a-century pandemic. The Consumer Protection and Recovery Act provides a critical first step toward restoring authority and effectiveness to the nation’s leading consumer protection agency. Swift action to restore the FTC’s traditional 13(b) authority means that when constituents contact your office, and tell your staff that they have lost their life’s savings to a work-at-home scam, or their identity has been stolen and someone has opened accounts in their name, or they just spent their stimulus payment on a supposed cure for COVID for their grandmother who’s on a respirator – there will still be an agency to refer them to. No one wants that staffer to have to add: “Well, we could send you to the FTC, but they don’t actually have the power to get you your money back.” Inaction or delay will mean no recovery for millions of wronged American consumers. The time to pass the Consumer Protection and Recovery Act is now.

#### Scamming causes extinction.

Casey Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

Beginning in the spring of 2018, scammers began to impersonate noted cryptocurrency enthusiast Elon Musk. They would use his profile photo, select a user name similar to his, and tweet out an offer that was effective despite being too good to be true: send him a little cryptocurrency, and he’ll send you a lot back. Sometimes the scammer would reply to a connected, verified account — Musk-owned SpaceX, for example — giving it additional legitimacy. Scammers would also amplify the fake tweet via bot networks, for the same purpose. The events of 2018 showed us three things. One, at least some people fell for the scam, every single time — certainly enough to incentivize further attempts. Two, Twitter was slow to respond to the threat, which persisted well beyond the company’s initial comments that it was taking the issue seriously. And three, the demand from scammers coupled with Twitter’s initial measures to fight back set up a cat-and-mouse game that incentivized bad actors to take more drastic measures to wreak havoc. That brings us to today. The story picks up with Nick Statt in The Verge: The Twitter accounts of major companies and individuals have been compromised in one of the most widespread and confounding hacks the platform has ever seen, all in service of promoting a bitcoin scam that appears to be earning its creator quite a bit of money. We don’t know how it’s happened or even to what extent Twitter’s own systems may have been compromised. The hack appears to have subsided, but new scam tweets were posting to verified accounts on a regular basis starting shortly after 4PM ET and lasting more than two hours. Twitter acknowledged the situation after more than an hour of silence, writing on its support account at 5:45PM ET, “We are aware of a security incident impacting accounts on Twitter. We are investigating and taking steps to fix it. We will update everyone shortly.” Among the hacked accounts were President Barack Obama, Joe Biden, Amazon CEO Jeff Bezos, Bill Gates, the Apple and Uber corporate accounts, and pop star Kanye West. But they came later. The first prominent individual account to be compromised? Elon Musk, of course. Within the first hours of the attack, people were duped into sending more than $118,000 to the hackers. It also seems possible that a great number of sensitive direct messages could have been accessed by the attackers. Of even greater concern, though, is the speed and scale at which the attack unfolded — and the national security concerns it raises, which are profound. The first and most obvious question is, of course, who did this and how? And at press time, we don’t know. At Vice, Joseph Cox, one of the best security reporters I know, reported that members of the underground hacking community are sharing screenshots suggesting someone gained access to an internal Twitter tool used for account management. Cox writes: Two sources close to or inside the underground hacking community provided Motherboard with screenshots of an internal panel they claim is used by Twitter workers to interact with user accounts. One source said the Twitter panel was also used to change ownership of some so-called OG accounts—accounts that have a handle consisting of only one or two characters—as well as facilitating the tweeting of the cryptocurrency scams from the high profile accounts. Twitter has been deleting screenshots of the panel and has suspended users who have tweeted the screenshots, claiming that the tweets violate its rules. To speculate much further would be irresponsible, but Cox’s reporting suggests that this is not a garden-variety hack in which a bunch of people reused their passwords, or a hacker used social engineering to convince AT&T to swap a SIM card. One possibility is that hackers accessed internal Twitter tools; another that Cox raises is that a Twitter employee was involved in the incident — which, if true, would make this the second inside job revealed at Twitter this year. In any case, Twitter’s response to the incident offered further cause for distress. The company’s initial tweet on the subject said almost nothing, and two hours later it had followed only to say what many users were forced to discover for themselves: that Twitter had disabled the ability of many verified users to tweet or reset their passwords while it worked to resolve the hack’s underlying cause. The near-silencing of politicians, celebrities, and the national press corps led to much merriment on the service — see this, along with Those good tweets below, for some fun — but the move had other, darker implications. Twitter is, for better and worse, one of the world’s most important communications systems, and among its users are accounts linked to emergency medical services. The National Weather Service in Lincoln, IL, for example, had just tweeted a tornado warning before suddenly going dark. To the extent that anyone was relying on that account for further information about those tornadoes, they were out of luck. Of course, Twitter’s move to stop verified accounts from tweeting represents a difficult balancing on equities. You would probably rather the National Weather Service not tweet than a hacker sell the account to a bad actor who logs in and falsely suggests that tornadoes are sweeping through every city in America. But the ham-fisted approach to resolving the issue — banning a huge portion of 359,000 verified accounts — reflects the staggering scale of the breach. This is as close to pulling the plug on Twitter as Twitter itself has ever come. And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.) It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it: “I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.” And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further. Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again. After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

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

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

Despite these limitations, the FTC has a formidable reputation as an enforcement authority, and commercial entities, and their lawyers, pay close attention to its orders and decisions.248 For example, when the FTC issues a complaint, it is published on the FTC’s website, which often generates significant attention in the privacy community.249 One reason for this is the fear firms have of the FTC’s auditing process, which not only is “exhaustive and demanding,” but can last for as long as 20 years.250 As such, the FTC settles most of the enforcement actions it initiates.251 Firms are motivated to settle with the FTC because they can avoid having to admit any wrongdoing in exchange for taking remedial measures, and thus they also avoid the costs to their reputation from apologizing.252 Though done by necessity, the rule-making process the FTC engages in with its consent orders and settlement agreements can be of benefit when regulating emerging technologies. 253 For one, it allows the flexibility needed to adapt to new and rapidly changing situations.254 Further, the FTC can wait and see if an industry consensus develops around a particular standard before codifying that rule through its enforcement actions.255 As with the common law, which has long demonstrated the ability to adjust to technological changes iteratively, the FTC’s incremental case-bycase approach can help minimize the risks of producing incorrect or inappropriate regulatory policy outcomes.256 In addition to its use of consent orders and settlement agreements, the FTC has created a type of “soft law” by issuing guidelines, press releases, workshops, and white papers.257 Unlike in enforcement actions, where the FTC looks at a company’s conduct and sees how its behavior compares to industry standards, the FTC arrives at the best practices it develops for guidance purposes through a “deep and ongoing engagement with all stakeholders.”258 As such, not only is the FTC’s authority broad enough to regulate the use of emerging technologies such as AI in commerce, but the FTC’s enforcement actions also constitute a body of jurisprudence the FTC can rely on to address the real and potential harms that stem from the deployment of consumeroriented AI.259 Given its broad grant of authority, the regulatory tools at its disposal, and its experience dealing with emerging technologies, the FTC is currently in the best position to take the lead in regulating AI. The FTC’s leadership is sorely needed to fill in the remaining – and quite large – gaps in those few sectoral laws that specifically address AI and algorithmic decision-making.260 Several factors make the FTC the ideal agency for this role. First, the FTC can use its broad Section 5 powers to respond rapidly and nimbly to the types of unanticipated regulatory issues AI is likely to create.261 Second, the FTC has an established history of approaching emerging technologies with “a light regulatory touch” during their beginning stages, waiting to increase its regulatory efforts only once the technology has become more established.262 This approach provides the innovative space needed for new technologies such as AI to develop to their full potential. Thus, as it has in the past, the FTC would focus on disclosure requirements rather than conduct prohibition, and take a case-by-case approach rather than rely on rulemaking.263 Also, as it has traditionally done, the FTC can hold public events on consumer-related AI and issue reports and white papers to guide industry.264 In other words, the FTC has long taken a co-regulatory approach to regulation, which it can and should proceed to do with AI. As in other emerging technology areas, this will help industry continue to grow and innovate, while allowing for the calibration among all relevant stakeholders of the “appropriate expectations” concerning the use and deployment of AI decision-making systems.265 At the same time, the FTC should use its regulatory powers to nudge, and when necessary, push companies to refrain from engaging in unfair and deceptive trade practices in the design and deployment of AI systems.266 The FTC should also place the onus on firms that design and implement those systems to ensure misplaced or unrealistic consumer expectations about AI are corrected.267 By nudging (or pushing) firms in this way, the FTC can “gradually impose a set of sticky default practices that companies can only deviate from if they very explicitly notify consumers.”268 In terms of disclosure requirements, as it has done in other contexts, the FTC can develop rules and guidelines for “when and how a company must disclose information to avoid deception and protect a consumer from harm,” which can include requiring firms to adopt the equivalent of a privacy policy. 269 Given the black box like nature of most algorithmic decision-making processes, there is much that AI developers might have to disclose to prevent those processes from being deemed unfair or deceptive.270 In addition, given its broad authority under Section 5, the FTC is able to address small, nuanced changes in AI design that could adversely affect consumers, but that other areas of law, such as tort, may not be able to adequately handle.271 Again, this is important because AI and algorithmic decision-making can pose profound and systemic risks of harm, even though the actual harm to individual consumers may be small or hard to quantify. And as it has done in the area of privacy, the FTC can become the de facto federal agency authority charged with protecting consumers from harms caused by AI systems and other algorithmic decisionmaking processes.272 The FTC also can, and should, seek to work with other agencies to address AI-related harms, given that the regulatory efforts of other agencies will still occur and be needed in specific sectors or industries, which would impact and be relevant to the FTC’s efforts as well.273 Agency cooperation is essential to ensuring regulatory consistency, accuracy, and efficiency in the type of complex, varied technological landscape that AI presents.274 This should not be a problem as the FTC’s Section 5 authority overlaps regularly with the authority of other agencies, and the FTC itself has a history of cooperating with those agencies.275 Further, the FTC can use its experience working with other agencies to build standards and policy consensus within the regulatory community and among stakeholders. 276 The overarching role the FTC has played in protecting consumer privacy within the United States also has given it legitimacy within the wider privacy community. The FTC has been pivotal over time in promoting international confidence in the United States’ ability to regulate privacy by for example acting as the essential mechanism for enforcing the Safe Harbor Agreement with the European Union.277 As it takes on a similar overarching regulatory role for AI and algorithmic decision-making processes in this country, the FTC should gain a similar level of legitimacy internationally. This is important given the increasingly cross border nature of AI research and development.

#### Unregulated emerging tech cause extinction.

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

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics “fade out” by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore’s Law. Farther out in time are technologies that remain theoretical but might be developed this century. Molecular nanotechnology could allow the creation of self-replicating machines capable of destroying the ecosystem. And advances in neuroscience and computation might enable improvements in cognition that accelerate the invention of new weapons. A survey at the Oxford conference found that concerns about human extinction were dominated by fears that new technologies would be misused. These emerging threats are especially challenging as they could become dangerous more quickly than past technologies, outpacing society’s ability to control them. As H.G. Wells noted, “Human history becomes more and more a race between education and catastrophe.” Such remote risks may seem academic in a world plagued by immediate problems, such as global poverty, HIV, and climate change. But as intimidating as these problems are, they do not threaten human existence. In discussing the risk of nuclear winter, Carl Sagan emphasized the astronomical toll of human extinction: A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other possible measures of the potential loss–including culture and science, the evolutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. There is a discontinuity between risks that threaten 10 percent or even 99 percent of humanity and those that threaten 100 percent. For disasters killing less than all humanity, there is a good chance that the species could recover. If we value future human generations, then reducing extinction risks should dominate our considerations. Fortunately, most measures to reduce these risks also improve global security against a range of lesser catastrophes, and thus deserve support regardless of how much one worries about extinction. These measures include:

#### Khan is constrained by the existing body of antitrust law---only the plan solves.

Tara L. Reinhart et al 21. \*Tara Reinhart is head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office. She focuses on civil litigation and government investigations, with an emphasis on complex antitrust litigation and international cartel probes. \*Steven C. Sunshine is the head of Skadden’s Global Antitrust/Competition Group. He represents clients in connection with antitrust aspects of mergers and acquisitions, litigation, counseling and grand jury investigations. \*David Wales is recognized as a leading antitrust lawyer and has over 25 years of experience in both private and public sectors. His practice focuses on providing antitrust advice to U.S. and international clients in a wide range of industries on all aspects of antitrust, including mergers and acquisitions, alliances, criminal grand jury investigations, dominant firm conduct, distribution arrangements, licensing and competitor collaborations. \*Julia York has represented numerous global corporations in various industries, including pharmaceuticals, telecommunications, energy and financial markets, in both litigation and transactional matters. “FTC Chair Khan Highlights Key Policy Priorities Going Forward, but Aggressive Agenda Faces Uphill Climb” Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates. 10-04-21. <https://www.skadden.com/insights/publications/2021/10/ftc-chair-khan-highlights-policy-priorities>

In a September 22, 2021, memorandum to staff, Federal Trade Commission (FTC) Chair Lina Khan formally laid out her “Vision and Priorities for the FTC,” reaffirming her calls for broad antitrust enforcement organized around three key policy priorities: merger enforcement, dominant intermediaries and restrictive contract terms. The memo further describes her vision for the agency’s strategic approach and operational objectives to support those priorities. Like her prior calls for antitrust reform and aggressive enforcement,1 the policy priorities outlined by Chair Khan are somewhat abstract and do not specify concrete actions the agency will take to achieve them. However, a close review of these high-level priorities, approach and objectives reveals some **practical obstacles to implementation**, including limitations **imposed by resource constraints and the existing body of antitrust law.** Policy Priorities: Merger Enforcement, Dominant Intermediaries and Restrictive Contract Terms Chair Khan listed three policy priorities for the agency going forward. First, she identified a need to strengthen the agency’s merger enforcement work to combat what she described as rampant consolidation and the market dominance she believes that consolidation has enabled. In particular, she expressed a concern that markets “will only become more consolidated” absent FTC vigilance and assertive action. She noted that revising the merger guidelines will be important to achieve merger reform, characterizing prior iterations of the guidelines as a “somewhat narrow and outdated framework for assessing mergers.” She also highlighted a need to find ways to deter unlawful transactions, including “facially illegal deals.” Second, Ms. Khan indicated her desire to focus enforcement on “dominant intermediaries and extractive business models.” After suggesting that market power is an increasingly systemic problem in the economy, and that the FTC should devote resources to regulating the most significant actors — with “next-generation technologies, innovations, and nascent industries” requiring particular vigilance, she focused specifically on the market position of “gatekeeper” companies and “dominant middlemen.” Such entities, according to Chair Khan, have been able to “hike fees, dictate terms, and protect and extend their market power.” She also posited that the involvement of private equity and other investment vehicles may strip such businesses of productive capacity and harm consumers. In discussing the agency’s strategic approach to address these issues, Chair Khan noted her intention to “focus[] on structural incentives that enable unlawful conduct,” and to “look[] upstream at the firms that are enabling and profiting from this conduct.” Third, Ms. Khan discussed certain contract terms, including **noncompete provisions**, repair restrictions and exclusionary clauses, that she believes could constitute unfair methods of competition or unfair or deceptive trade practices. She also **advocated for a “holistic” approach to identifying harms to account for effects on workers** and independent businesses. Describing this holistic approach in broad terms, she indicated that the agency would **focus on “power asymmetries** and the unlawful practices those imbalances enable,” and the effects such conduct has, for example, on **marginalized communities**. In sharing her hopes to “further democratize the agency,” Chair Khan similarly expressed that the FTC’s work should help “shape[] the **distribution of power and opportunity** across our economy.” More generally, the memo identifies areas of investment for the agency to help achieve these priorities. This includes incorporating a greater range of analytical tools and skillsets into the agency’s work, and expanding the agency’s regional footprint to grow its ranks, including by hiring additional technologists, data analysts, financial analysts and experts from outside disciplines. Chair Khan also announced that she will name Holly Vedova and Samuel Levine, both career FTC staff (as opposed to political appointees), as the director of the Bureau of Competition and the director of the Bureau of Consumer Protection, respectively. Practical Limitations on Implementation of Chair Khan’s Policy Priorities Chair Khan describes the antitrust agenda outlined in her memorandum as “robust,” and the memo communicates her intention to attempt to reshape antitrust policy and enforcement. However, a revolutionary shift in antitrust enforcement by the FTC will **face substantial practical challenges.** Most significantly, the path to reshaping antitrust enforcement will be constrained by the substantial body of existing antitrust law and the need to convince a federal judge that the **conduct in question is unlawful**. Chair Khan’s memo generally advocates for a new, more expansive and holistic approach to identifying antitrust harms **beyond the traditional focus on consumer welfare** and price effects. However, **courts have — and will likely continue to — rely on existing standards developed** in the case law over many decades. Those standards focus on consumer welfare and predominantly price effects. **Absent legislative change**, then, a **practical gap** will persist between Chair Khan’s **vision of refocused and more assertive antitrust enforcement**, on the one hand, and **the law that would apply** to any FTC enforcement action, on the other.2

### Plan---1AC

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

### Solvency---1AC

#### Contention 3 is Solvency.

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

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

Introduction

This paper offers a critical investigation of the law and economics of competition law enforcement in conflicts between workers and employers in the European Union (hereinafter EU) and the US. In such cases competition law comes into direct conflict with the principle of worker solidarity: according to the principle of market competition individuals are expected to take independent economic decisions and actions, whereas workers need to take collective economic actions and decisions to protect their interests. This conflict is particularly obvious in the context of the so-called gig economy,1 in which employers keep casualised workers at legal arms’ length to reduce labour and regulatory costs.2 If gig workers take collective action against their working conditions, they might face attack from competition law, because legally they might be considered independent service providers, rather than workers.3 The legal conundrum facing gig workers has become an increasingly popular subject in the law and economics literature.4 Nevertheless, the more fundamental question of how the enforcement of competition rules affects the overall position of workers beyond the limited case of the gig economy remains largely unexplored. This paper aims to investigate this broader and more fundamental question. In order to provide a sufficiently global answer, the paper focuses on the legal positions of the EU and US, as the leading competition law jurisdictions and primary competition policy exporters.5 The EU–US comparison shows that despite the slightly different legal tests applied in these polities, competition rules constitute nearly equally disciplining mechanisms against collective worker action on either side of the Atlantic. This paper also makes an original contribution to the emerging debate on whether and how competition law can contribute to wealth equality between citizens in the post-2008 crisis economy. The existing debate on the competition law–equality relationship takes the ‘consumer welfare’ standard as its main reference point: it focuses exclusively on the distribution of wealth between consumers and producers; as a result, it overlooks the production process that takes place before consumers meet products and services, and the position of workers within it.6 This is a natural result of competition law's reliance on a limited area of neoclassical economics called ‘equilibrium economics’ that understands efficiency exclusively as a market mechanism in which the price manifests itself where supply meets demand.7 Departing from the mainstream competition law and economics methodology, this paper builds its investigation on a holistic theoretical foundation, looking beyond equilibrium economics at labour exploitation theory as established in neoclassical as well as Marxian models. This analysis shows that despite standing at opposing ends of the political spectrum and whilst having some fundamental differences, Marxist and neoclassical models agree that collective worker action is economically beneficial and socially necessary. As a result, a critical analysis of the current legal situation on both sides of the Atlantic in light of this holistic framework illustrates how competition law's hostility towards collective worker action is not only unjust but also economically unsound. This paper demonstrates that the key problem in competition law's treatment of labour stems from the application of the consumer welfare standard in cases involving the competition–solidarity conflict without paying any attention to the idiosyncratic qualities of labour that render it naturally open to exploitation. Similarly, the consumer welfare standard overlooks the fact that consumers and workers are essentially the same group of people and one's welfare cannot be increased or decreased without affecting the other's.8 Even if worker exploitation could result in reduced labour costs and decreased prices, this cannot be deemed efficient as it reduces the workers’ welfare and results in broader negative socio-economic effects. Similarly, collective worker action resulting in higher labour costs and potentially higher prices cannot automatically be deemed inefficient, because although this might increase the prices consumers pay, they benefit from higher wages and better working conditions in their position as workers. As a result of this critical analysis, the paper proposes an original and more inclusive ‘citizen welfare’ standard that takes into account the economic effects of anti-competitive behaviour on workers as well as consumers. The citizen welfare standard could also potentially be applied in other contexts to solve long-standing conflicts between competition and other policy objectives, such as industrial, environmental and social policy objectives,9 although this paper primarily focuses on the application of citizen welfare to the competition–solidarity conflict. The structure of the paper is as follows: the next section provides an opening discussion of competition law, consumer welfare and equality. This is followed by a discussion of the economic theory of labour exploitation. Then, the paper investigates how competition law approaches the competition–solidarity conflict in the EU and the US. The fourth section critically discusses the EU and US legal positions in light of economic theory. This section also develops the citizen welfare approach as an alternative to consumer welfare for the resolution of the competition–solidarity conflict. This is finally followed with conclusions. Regarding terminology, this paper uses the term ‘worker’ (rather than employee) as a non-legal, generic term encompassing all individuals who make a living by providing labour power as a production factor in the production process of goods and services. Similarly, the term ‘labour’ is used to refer to the contribution of the workers to the production process as an abstract human factor. However, if the courts or authorities in question use a different term (such as employee) in a specific case, the paper uses the same term in the discussion of that specific case.

#### Worker welfare can easily be assessed.

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

Just as consumer welfare can be measured through economic factors like price, output, quality, and innovation, **courts and economic experts can assess worker welfare through a set of analogous factors:** wages and benefits, hours, working conditions,65 and training. One major tension between these two standards is that workers benefit from higher wages while consumers benefit from lower prices, but these factors capture **similar characteristics of equilibria in both markets**.66 Wages and hours are the labor-market analogs of price and quantity, and benefits can be considered along with wages as a type of compensation. **Working conditions reflect heterogeneity within a single type of employment**, just as quality reflects heterogeneity within a single type of product. And training reflects how labor markets can be dynamic, just as innovation reflects how product markets can be dynamic: that is, labor productivity can improve over time, just as firm productivity can improve over time. As in product-market analysis, courts and economic experts can assess how a contested activity (e.g., a merger) **affects these factors and estimate the net effect on worker welfare.** A worker welfare standard would be similar to a consumer welfare standard in that much of its application would fall on economic experts, whose work would be assessed and weighed by courts. Of course, some cases will be clearer and may be amenable to per se analysis, like an agreement between firms to fix wages. But, as in product markets, other cases will be subtle, and economics will have a role to play. **Just as economic models are used to forecast** the effects of certain market events on price and quantity, and aggregate those effects to estimate net effects on consumer welfare,67 economics will also be instrumental in forecasting the effects of market events on wages and hours, and aggregating those effects to estimate net effects on worker welfare. Antitrust analysis is highly technical in the status quo,68 and **a worker welfare standard would not be any different in its reliance on economics**. The main difference is that a worker welfare standard **focuses attention on the interests of workers, who are often neglected** despite their vulnerability to rent-extractive firm behavior, and recognizes that advancing the interests of workers may **require more than advancing the interests of consumers.**

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

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

Anticompetitive behavior. Plaintiffs would be able to base their case on any of the following anticompetitive acts: mergers in highly concentrated markets; use of noncompete and related clauses; restrictions on employees’ freedom to disclose wage and benefit information; unfair labor practices under the National Labor Relations Act;38 misclassification of employees as independent contractors; no-poaching, wage-fixing, and related agreements that are also presumptively illegal under Section 1; and prohibitions on class actions. Of course, current law gives employees the theoretical right to allege these types of anticompetitive behavior, but the cases show a pattern of judicial skepticism, as noted earlier. Codification would help employees by compelling courts to take these claims seriously. Employers would be allowed to rebut a prima facie case of anticompetitive behavior by showing that the act in question would likely lead to an increase in wages. This reform would strengthen and extend Section 2 actions against labor monopsonists by standardizing a list of anticompetitive acts. While not all of these acts are invariably anticompetitive, the employer would be able to defend itself by citing a business justification. For example, a noncompete could be justified because it protects an employer’s investment in training. If so, an employer could avoid antitrust liability by showing that its use of noncompetes benefits workers, who obtain higher wages as a result of their training.39 These reforms would strengthen Section 2 claims against labor monopsonies but would also preserve the doctrinal structure of Section 2. They would not generate significant legal uncertainty or require a revision in the way that we think about antitrust law.

#### Alternative remedies don’t solve deterrence.

Samuel Weinstein 19. Assistant Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. “Article: Financial Regulation in the (Receding) Shadow of Antitrust.” *Temple Law Review* (91): 487-491.

Even when sector regulators prioritize protecting competition, many lack the expertise and institutional mechanisms to do so effectively. Regulatory agencies might not employ investigatory and adjudicatory procedures sufficient to root out anticompetitive conduct. While courts must in many cases allow for exhaustive discovery, the same cannot be said for most agency proceedings. As a result, even those sector regulators that value protecting competition may not have the institutional systems necessary to follow through effectively. The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million." Agency capture is another explanation for regulators' relative weakness as competition enforcers. The literature on capture is well developed. There is a general scholarly consensus that the political nature of top agency jobs and the revolving door between agencies and the industries they oversee make sector regulators much more susceptible to industry pressure than antitrust courts. Studies have shown that capture may be a particular problem at the financial regulatory agencies. There is a steady flow of lawyers between the SEC and CFTC, on the one hand, and Wall Street firms and the law firms and lobbyists [\*489] that represent them on the other, which appears to affect outcomes of agency proceedings in some cases. Objective measures of the relative competition-enforcement abilities of the antitrust agencies versus the sector regulators tend to confirm the supposition that sector regulators generally cannot be relied on to fulfill the antitrust function in regulated markets. The expert staffs of the antitrust agencies are far larger and more experienced than the competition staffs, if any, at the sector regulators. In recent years, the Antitrust Division typically has had between 340 and 400 attorneys and approximately 50 economists dedicated to competition enforcement, while the FTC's Bureau of Competition has had around 300 attorneys and support staff and approximately 50 antitrust economists. Some regulatory agencies, like the FCC, Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve, have dedicated competition staff with specific expertise. The FCC has a Wireline Competition Bureau, which includes a Competition Policy Division. The FDIC, Federal Reserve, and the Office of the Comptroller of the Currency have staff dedicated to reviewing proposed bank mergers. Even at these agencies, however, the competition staff is smaller and more narrowly focused than the staffs of the Antitrust Division and FTC. [\*490] The comparison with the SEC and CFTC is starker. Neither agency has a dedicated competition division or group. And neither agency established such a body post-Credit Suisse, when it appeared the SEC and CFTC would have increased responsibility for competition matters, or in the wake of Dodd-Frank, which required the agencies to monitor and protect competition in the derivatives markets. This paucity of personnel resources is perhaps predictable given these agencies' bureaucratic cultures. Considering this lack of experienced competition staff, it is unsurprising that the SEC and CFTC bring very few independent competition-related enforcement actions. While these agencies have collaborated with the [\*491] Department of Justice and other enforcement agencies on significant competition investigations, there is little evidence that they would bring such cases on their own. It seems clear that the financial services agencies are either unwilling or unable to "perform the antitrust function" as envisioned by the Supreme Court's case law balancing antitrust and regulation. This conclusion is troubling. It means that when courts apply Credit Suisse or Trinko to shift the responsibility for policing competition away from the expert antitrust agencies to regulatory bodies that are unprepared for the task, they are leaving some regulated markets, especially the financial markets, vulnerable to anticompetitive conduct.

#### Only the plan can adapt to market conditions.

Howard Shelanski 21. Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP. “Antitrust and Deregulation.” *Yale Law Journal* (127): 1951-1953. <https://www.yalelawjournal.org/pdf/Shelanski_kcn6n4k3.pdf>.

A longstanding debate examines the comparative advantages of antitrust and regulation. The late Cornell economist Alfred Kahn, the architect of airline deregulation in the Carter Administration, wrote that “society’s choices are always between or among imperfect systems, but that, wherever it seems likely to be effective, even very imperfect competition is preferable to regulation.”117 Kahn does not address antitrust in that quotation, but it suggests that he would find antitrust law’s more targeted, case-by-case approach to governing competition to be preferable to regulation. Indeed, Kahn elsewhere wrote, while expressing his “belief in vigorous enforcement of the antitrust laws,” that “the antitrust laws are not just another form of regulation but an alternative to it—indeed, its very opposite.”118 Then-Judge Stephen Breyer has similarly stated that “antitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative.”119 The comparisons that Breyer and Kahn made were, in context, mostly between antitrust and rate regulation, where the agency was trying to protect consumers from monopoly pricing.120 But some of these criticisms, including “high cost; ineffectiveness and waste; procedural unfairness, complexity, and delay; unresponsiveness to democratic control; and the inherent unpredictability of the end result,” apply to most kinds of regulation.121 Regulation might well be worthwhile despite those potential drawbacks, but certain attributes—ex post and case-by-case enforcement, judicial oversight with the government bearing the burden of proof—make antitrust enforcement less vulnerable to those critiques. Regulation can also be comparatively slow to adapt to new market conditions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than antitrust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transition to more competitive structures.126 As Michael Boudin, a former DOJ antitrust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congressmen and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

#### The plan creates a flexible standard that overcomes new challenges faced by workers.

Alden Abbott 21. Senior Research Fellow at the Mercatus Center at George Mason University. “FTC Competition Regulation: A Cost-Benefit Appraisal.” 6/28/2021. https://www.mercatus.org/publications/antitrust-and-competition/ftc-competition-regulation-cost-benefit-appraisal

Competition rules, however, inherently would be overbroad and would suffer from a very high rate of false positives. By characterizing certain practices as inherently anticompetitive without allowing for consideration of case-specific facts bearing on actual competitive effects, findings of rule violations inevitably would condemn some (perhaps many) efficient arrangements. Furthermore, because rules by their nature are fixed in stone (at least until they are amended or repealed), they “frequently fail to account for market dynamic, new sources of competition, and consumer preferences.” Thus, they lack case law adjudication’s feature of analytic improvement (reflected in periodically updated federal antitrust guidelines) based on changing market conditions and improved economic analysis.

In sum, competition rules are a far more blunt and inflexible tool than adjudication and, as such, are less conducive to welfare-enhancing competition policy outcomes.

#### State action gets struck down.

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.

#### Antitrust is inevitable.

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.

## 2ac

### Uncooperative federalism cp---2ac

#### b---too uncertain and doesn’t last.

Christopher K. Bader 14. J.D. from Saint Louis University School of Law. “A Dynamic Defense of Cooperative Federalism” 35 Whittier L. Rev. 161 (2014). https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2189920

Related to dynamism’s shortcomings in redundancy and plurality is the issue of dialogue. Dynamic federalism commendably promotes meaningful deliberation between state and federal regulators. However, similar to state regulatory dissent against tyrannical federal laws, limitless state regulatory authority may not be the most efficient method of facilitating dialogue. Dynamism unduly limits the forum for dialogue to formal enactments that produce contrary or inconsistent results. Cooperative federalism, in contrast, invites dialogue on multiple interconnected planes, including during the adoption of a law through the political process and the formulation and enforcement of that law via state-specific implementation strategies.120 Dynamism pits only legislature against legislature. Cooperation allows states to lobby in Congress at the lawmaking stage and to voice disagreement through executive implementation, which may in turn produce diverse shadings in enforcement policies that, while they emanate from the same federal scheme, meaningfully account for individual states’ needs. An example might be helpful. Two prominent instances of state regulatory dissent come from last year’s elections, namely, the measures passed in Colorado and Washington to legalize marijuana. While these two states have made a strong statement of their people’s desire to enjoy legalized marijuana,121 the laws have in practice done nothing on a regulatory level; federal law still makes marijuana possession illegal. If Colorado and Washington participate actively in the development of enforcement plans for the federal law, they might be able exercise significant influence over the tenacity or scope of enforcement. In that way, they may have more success in achieving the ultimate goal of allowing marijuana use (to some extent). Another interesting point regarding dialogue is dynamism’s need for all regulatory actors to actively participate. Without continuing participation by many state legislatures, dialogue would wither. But dynamic federalism models do not seem to force states to participate in any significant way. What if state legislators are simply too lazy to engage in the exhausting, endless process of pitting state law against federal law?122 Dynamic models place essentially zero emphasis on accountability. If states and the federal government are free to regulate any activity, the citizen is faced with the grueling chore of experiencing the enforcement of a given regulation and then trying to determine from which sovereign the law emanated. Because the modern state of U.S. federalism involves numerous interconnected state and federal enforcement agencies, this task may be far less easy than simply looking at the badge of the officer breaking down one’s door.

#### 6---coercion decks solvency.

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

Second, and more important, commandeering and conditional spending might serve countervailing national interests sufficient to justify whatever risk they pose to federalism. In Printz, for example, Congress had identified a pressing national problem, the solution to which seemed to require—not absolutely, but reasonably—the participation of state law enforcement officers during the five years it would take to bring a federal database online.154 Given the relatively modest risk involved in requiring state officials to perform such a minor task on an interim basis, federal commandeering may well have been cost-justified in this circumstance.155 Of course, the federal government might have purchased the states’ compliance through a non-coercive exercise of the conditional spending power.156 But given the deeply rooted gun culture in many states, both strategic and principled holdouts seem likely to have been a real problem. Of course, these are the problems that arguably justified a national legislative solution in the first instance. New York is perhaps an even more compelling illustration of the point. The problem of low-level radioactive waste disposal was obviously a national one of substantial import that the states had tried and failed to resolve on their own.157 The legislation New York was required to adopt—establishing a waste disposal site or taking title to all waste produced within its borders—involved far greater burdens than the Brady Act’s background checks.158 But the need for federal action was also greater and the risk to federalism substantially diminished by the fact that New York itself agreed to the federal scheme.159 Moreover, as in Printz, commandeering was used to overcome the same problems of interstate coordination that arguably justified federal legislation in the first instance.160 The same basic analysis holds for Congress’s use of the conditional spending power in NFIB. The Affordable Care Act’s Medicaid expansion responds to a serious problem of interstate coordination in the provision of health insurance to low-income Americans.161 Absent effective coercion of states, there was a real risk that the same coordination problems necessitating federal action would undermine the Act’s effectiveness. The aftermath of the Court’s decision bears this out. Freed from federal coercion, nearly half of the states have refused to participate in the Act’s Medicaid expansion, with obvious spillover effects on other states and the nation as a whole.162 This is strong evidence that constituency relations are important drivers of institutional decision-making but also strong evidence of the damage state constituencies can do in policy spheres better dealt with at the national level. 3. The Lesser of Evils Finally, as Neil Siegel points out, placing federal commandeering and conditional spending off limits may force the federal government to resort to wholesale preemption of state regulations and the establishment of a new federal enforcement bureaucracy, whose operations would be entirely insulated from local control.163 In cases where this represents a plausible alternative to commandeering, the anti-commandeering principle may actually diminish the influence of local constituencies on the formation and administration of regulatory policy. This point receives further support from the work of Heather Gerken and Jessica Bulman-Pozen, who argue that state governments implementing federal policy under conditional spending and commandeering statutes enjoy substantial flexibility to account for, accommodate, and respond to local interests and preferences.164 In other words, electoral incentives keep state officials surprisingly responsive to their popular constituency even when they are operating under federal direction. Federal administrators possess far fewer incentives to respond to local constituencies.165 Thus, where preemption and federal administration are the likely alternative to commandeering and coercive conditional spending, the latter two would be preferable from the standpoint of the constituency-relations model.166

#### 10---uncooperative federalism sucks

Miller 19 — Lisa Miller, Professor of Political Science at Rutgers University, former Professor of American Government at the Rothermere American Institute at the University of Oxford, former Visiting Scholar at the Program in Law and Public Affairs in the Woodrow Wilson School of Government at Princeton University, PhD in Political Science from the University of Washington, BA in Political and Social Thought from the University of Virginia, 2019 (“FEDERALISM IS UNLIKELY TO SAVE PROGRESSIVE POLITICS,” *Law & Political Economy,* August 11th, Available Online at <https://lpeproject.org/blog/federalism-is-unlikely-to-save-progressive-politics/>, Accessed on 01-16-2021)

Can federalism work for progressives? Since the election of Donald Trump, left-leaning scholars and political activists have increased their focus on state and local governments as potential venues for progressive policies. Legal scholars Heather Gerken and Joshua Revesz championed the use of federalism’s multi-layered venues as an opportunity for progressives to “resist Washington overreach, shape national policies, and force the Republicans to compromise.” Because state and local governments are often “led by dissenters and racial minorities,” they argue, progressives have little to fear from the old days when white supremacists used state and local governments to oppose civil rights. In their view, “This is not your father’s federalism. The problem with this argument is that it lacks any account of power, that is, how the structure of American federalism shapes and channels political activities in ways that are more advantageous to some interests than to others. American federalism is not neutral. In fact, federalism’s many venues generally disadvantage groups with comprehensive, progressive policy aims for several reasons: first, federalism does not just create political opportunities but also limits them; second, state and local governments are poorly situated to solve national problems; third, jurisdictional boundaries can be remade in ways that disadvantage progressives; and finally, contestation itself over which level of government should perform which activities harms progressive causes. To begin, federalism functions not only as a system of multiple venues but also as a system of vetoes, that is, political choke points that allow small groups with narrow economic or ideological interests to block or slow implementation of policies preferred by political majorities. Gerken and Revesz laud this blocking potential, but blocking is a generally rear-guard action for progressives, while it is often the end in itself for conservatives. Progressives may use uncooperative federalism to resist deportation of undocumented immigrants, for example, but what they really seek is national immigration reform that protects migrant workers, refugees, immigrants, and their families. For conservatives, however, using states to preempt local laws (e.g., gun control), or resist federal law (e.g., expansion of Medicaid) often is the goal. Blocking policies from being implemented, being uncooperative, or dragging one’s feet in enforcing federal rules are not strategies that are equally beneficial to all political interests. By definition, American federalism has a status quo bias or, to put it plainly, conservativism has a built-in advantage. This is not to suggest that the only goal of conservatives is to block progressive policies rather than enact their own. But we need to recognize that progressive agendas, by definition and in contrast to conservatives, more commonly seek to marshal and expand the resources of the national government in order to enact comprehensive, universal social policies aimed at providing or improving public goods. For such policies to succeed, big national policy initiatives are often required. As University of Oxford political scientist Desmond King reminds us, “forceful federalism”—major national policies backed by aggressive enforcement—are the primary mechanisms through which many forms of social progress have occurred in the United States. In contrast, without the powerful resources of the national government and consistent policy enforcement across all levels, the many layers of American federalism allow for a great deal of disruption to progressive policies, even when majorities support them. A second reason why the structure of American federalism disadvantages progressive policies is that states are not well-situated to enact most progressive legislation on their own. It is true that if the Trump administration guts environmental protections, for example, states such as California can enact higher standards and work with other ‘blue’ states to do the same. This is the famous “laboratories of democracy” argument which is often used in Tenth Amendment state sovereignty claims. But the United States has free and open borders between states, which means that state policies are routinely cross-contaminated. From environmental degradation to illegal gun markets, state and local governments cannot control who or what comes and goes from their jurisdiction, making control over most policies that progressives care about extremely difficult. In fact, many environmental problems can barely be contained by national policies, let alone state ones. Moreover, state-by-state enactment of progressive policies requires many extraordinary acts of collective action and cooperation and results in highly uneven distribution of policy benefits across regions. States also operate with extreme fiscal limitations, constraining the type of policy innovation they can implement. Most states have balanced budget amendments and are therefore restricted with respect to borrowing, which limits their ability to spend during times of economic contraction. Moreover, states cannot control movement of employers, leaving them vulnerable to the demands of corporate interests. And what’s true at the state level is even more true at the local level, as local governments are almost entirely at the mercy of property taxes. The national government has no such constraints. With the dollar as the world’s default reserve currency and the U.S. the world’s primary super-power, the United States government essentially borrows when it pleases, and on generally favorable terms. Few countries, let alone individual states, can say the same. A third reason why American federalism is a questionable ally for progressives is that the jurisdictional boundaries of national, state, and local governments—and conservatives’ commitment to sustaining them—are fluid and contested. There are no guarantees that progressive policies at the state and local level today will be safe from reactionary rollback tomorrow. Gun control illustrates this point with great clarity. When cities faced overwhelming gun violence in the 1990s, many tried to enact gun regulation supported by local and national majorities. Despite conservatives’ stated commitment to “local control,” gun advocacy groups mobilized to pass preemption laws at the state level, barring cities from enacting gun regulations stricter than those of the state. When cities responded by suing gun manufacturers in federal court, Republicans went for full national preemption with the Protection of Lawful Commerce in Arms Act, which gave civil immunity to gun manufacturers from liability lawsuits in federal court. So much for state and local control. Such strategies are a form of preemption and, while most national preemption is floor preemption—that is, requiring states not to fall below a specific level of provision (welfare spending, pollution limits, and so on)—the gun control case illustrates how Republicans might pursue ceiling preemption, that is, forcing states and localities to abide by limits on what they can do and spend. Legal scholars might see such preemptions as constitutionally problematic based on Tenth Amendment state sovereignty jurisprudence, but students of American history know that such obstacles can be swept away, replaced by new jurisprudential standards. A good example of such jurisdictional fluidity is the gradual decline of congressional power under the Commerce Clause by conservatives on the Supreme Court, from U.S. v. Lopez through National Independent Business v. Sebelius. While these decisions barred Congress from requiring local officials to conduct background checks and states to expand Medicaid (respectively), the jurisprudential shift from the previous era on the Commerce Clause illustrates just how mutable constitutional rules can be. There is no reason to assume that the current composition of the Supreme Court would reject federal preemption of state and local progressive policies based on the Supremacy Clause, Compact Clause or treaty powers. The Court has already interpreted preemption doctrine to bar some state tort claims against corporate entities. A final and crucial reason why progressives should be wary of federalism’s alleged political neutrality is that the contestation itself over the jurisdictional boundaries of different levels of government benefits conservative views. When progressives win—or appear to be winning—major policy victories, no matter the level of government, opponents can, and do, move the political debate from whether to enact such policies, to which level of government should do so. This move disrupts, slows, or downright blocks political momentum and policy reform. The endless disputes over the constitutionally proper roles of different levels of government are costly. They take valuable time and resources away from the already slow national policy-making process and disrupt the fragile political mobilization of large groups that support them. By embracing federalism’s alleged virtues, progressives allow their opponents to perpetuate the idea that opposition to policy at one level of government or another is rooted in constitutional principle rather than political interests. Such strategies also lead to a perverse positive feedback loop for progressives, in which the arguments they make about state and local prerogatives end up enriching the ability of conservatives to block the very national policies that progressives care about in the first place. None of this is to say that progressives should not fight reactionary policies at the state and local levels if they can. State and local governments should be a central piece of progressivism because without them, national policies can be thwarted, and because political mobilization at the state and local level is a vital component of voter turnout and other forms of national political participation. But caveat emptor. Progressives should be careful what they wish for. Today’s states’ rights to protect the environment are tomorrow’s states’ rights to deny people health care and unionization or exclude immigrants from public schools. American federalism is much more amenable to manipulation by advocates for the latter than the former.

#### No Bioweapon threat---empirical consensus, technical challenges, and no scenario for extinction.

Marc-Michael **Blum 20**. Dr. Blum is working the in the field of analysis, decontamination, countermeasures and mitigation of chemical warfare agents with more than 15 years’ experience. "Corona and Bioterrorism: How Serious Is the Threat?" War on the Rocks. 6-22-2020. <https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/>

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are [teeming with talk](https://www.businessinsider.com/coronavirus-white-supremacists-discussed-using-covid-19-as-bioweapon-2020-3?r=DE&IR=T) about “biological warfare.” ISIL even called the virus “[one of Allah’s soldiers](https://www.wsj.com/articles/what-jihadists-are-saying-about-the-coronavirus-11586112043)” because of its devastating effect on Western countries. According to a recent [memo](https://www.independent.co.uk/news/world/americas/coronavirus-terrorist-white-supremacy-fbi-bioterrorism-a9417296.html) by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks. How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the **technical challenges** associated with weaponizing biological agents have **proven insurmountable**. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy. A **History of Failures** Biological warfare, which uses organisms and pathogens to cause disease, is [nearly **as old as war** itself](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1200679/). The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat). Among terrorists, however, the use of biological weapons has **been rarer**, although groups from nearly all ideological persuasions [have contemplated it](https://mitpress.mit.edu/books/toxic-terror). Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. **No one died** in **any** of these instances. The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to [buy, steal, or develop biological agents](https://www.jstor.org/stable/26369585?seq=1#metadata_info_tab_contents). For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop. Yet **none of these efforts succeeded**. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that [none of the toxin](http://news.bbc.co.uk/2/hi/uk_news/4433499.stm) had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose [**only fatality** was **the hamster**](https://www.dw.com/en/cologne-ricin-plotters-bought-a-hamster-to-test-biological-weapon/a-44804164) on which it was tested. Of the **tens of thousands** of people that jihadists have murdered, not a **single one** has died from biological agents. It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as [Bruce Ivins,](https://www.npr.org/templates/story/story.php?storyId=93194941&t=1591560313301) a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents. **Technical Challenges** Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a **technical level**, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be **isolated** and **disseminated**. But this is more **difficult** than it seems. As well as advanced training in biology or chemistry, isolating the agent **requires significant experience**. It also has to be done in a **safe**, **contained** environment, to stop it from spreading within the terrorist group. Contrary to what [al-Qaeda said in one of its online magazines,](https://www.telegraph.co.uk/news/worldnews/7865978/Al-Qaeda-newspaper-Make-a-bomb-in-the-kitchen-of-your-mom.html) you **can’t** just make a **(biological) weapon** “in the **kitchen** of your mom!” In addition, there is the **challenge of dissemination**. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in **perfect conditions**. In the case of the bacterium anthrax, for example, only spores of a **particular size** are likely to be effective in certain kinds of **weather**. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is **unlikely** that terrorist groups possess the resources, stable environment, and patience to do likewise. **Doomsday Scenarios** Even if terrorists somehow succeeded, it is **nearly inconceivable** that the resulting “weapon” would be as powerful as the recent coronavirus, SARS-CoV-2. One of its uniquely devastating features has been that people are infectious while experiencing no symptoms. As it spread across the globe, there was no treatment, no vaccine, an incomplete understanding of its pathological modes of action, and no easy, cheap and widely available testing. It was the viral equivalent of a “zero-day exploit” — a cyber-attack that happens before any patch is available. None of the viruses on the U.S. Centers for Disease Control and Prevention’s list of the [**most dangerous biological agents**](https://emergency.cdc.gov/agent/agentlist-category.asp) could be easily “weaponized” or would have the same, **devastating effects** as SARS-CoV-2. Pathogenic viruses such as smallpox, Ebola, Marburg, and Lassa are extremely hard to find, isolate, and spread. Botulinum and ricin are dangerous toxins, but **not contagious**, while [Tularemia](https://www.cdc.gov/tularemia/index.html) cannot be transmitted from human to human. The plague is, of course, capable of causing pandemics, but most countries are nowadays [well prepared for this particular virus,](https://www.who.int/csr/resources/publications/plague/CSR_ISR_2000_1/en/index3.html) and will be able to limit — and cope with — localized outbreaks. This leaves only anthrax, a soil bacterium which is relatively easy to obtain. Even so, isolating a **highly pathogenic strain** is difficult. More importantly, anthrax is **not contagious**, and while its spores are durable and affected areas can be hard to de-contaminate, it is **unable to spread** on its own. Regarding SARS-CoV-2, it is important to distinguish between the possibility that the virus occurred naturally and escaped from a laboratory, and the idea that it was engineered for maximum infectiousness and deliberately released. The first remains a possibility, although other explanations are equally — if not more — plausible, while the second has been debunked by a [comprehensive examination](https://www.nature.com/articles/s41591-020-0820-9) in the journal Nature Medicine, which concluded that SARS-CoV-2 was “not a laboratory construct or a purposefully manipulated virus.” The chances that terrorists would be capable of engineering a virus such as SARS-CoV-2 **without access** to a state’s resources are **virtually zero.** If anything, the possibility of a lab escape — however remote — highlights the importance of [biosafety.](https://warontherocks.com/2020/06/a-guide-to-getting-serious-about-bio-lab-safety/) While governments have paid much attention to laboratories with the highest biosafety level (level 4), work on bat-born coronaviruses is regularly performed at lower levels (level 3, and even level 2), and should instead be subject to similar safety requirements. In sum, small-scale attacks using anthrax or other agents may be possible, but the risk of a highly advanced, weaponized pathogen that spreads among large populations — a **terrorist-initiated biological doomsday** — is **very low.** The only exception, of course, is if terrorists received support from a state, acted as its proxies, or were able to draw on its resources — as in Ivins’ case.

### Labor structure cp---2ac

#### antitrust is the less stringent option.

Daniel Crane 18. Frederick Paul Furth Professor of Law, University of Michigan. “Antitrust's Unconventional Politics.” *Virginia Law Review* (104): 134-135. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3019&context=articles>.

Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative.

It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left– right categories.

#### 4---perm do the counterplan---antitrust laws are regulations.

Robinhood Financial LLC 20. “What are Antitrust Laws?”. 10-6-20. https://learn.robinhood.com/articles/4x5oCZOtg43uORfxEnxPRW/what-are-antitrust-laws/

Antitrust laws are regulations that aim to promote fair business competition in an open market and protect consumers by banning certain predatory practices.

#### Antitrust is a pre-requisite to effective labor law. Anything else allows skirting damages and prevention of effective collective bargaining.

Marshall Steinbam 19. Professor of Law, University of Utah. “Antitrust, The Gig Economy, and Labor Market Power.” *Law and Contemporary Problems* 82(3): 61-64.

This paper sets out an important but under-appreciated aspect of the rise in labor market precarity and diminishing worker bargaining power: the erosion of antitrust laws restricting dominant firms’ ability to use vertical restraints to control and restrict both less powerful affiliates and the workers who work for them, and the concurrent use of antitrust against any attempt by those workers or independent businessmen or contractors to bargain collectively against such concentrations of power. In ascertaining the causes of contemporary inequality in wealth, income, and social status, especially with respect to the labor market, we cannot overlook the role that antitrust has played.

This contrasts with a recent Economic Policy Institute paper by Heidi Shierholz and Josh Bivens that treats the rise of employer power in labor markets, and the extent to which weakening antitrust has caused that phenomenon, as a less important cause of rising inequality and stagnant wages compared to the erosion of labor law and thus of collective bargaining.95 Their evidence for the contention that diminishing worker bargaining power matters more than concentrated employer bargaining power is that inequality within the distribution of labor income is a more significant cause of stagnating wages and the growing gap between median worker pay and average worker productivity than is the declining labor share of national income, which is of more recent vintage than either of the first two economic trends.

But we cannot map rising labor income inequality to worker bargaining power and labor law and the declining labor share of income to employer power and antitrust so neatly. As the analysis in Parts II and III show, income inequality is to a large extent caused by rising earnings inequality between firms, rather than between workers, reflecting employer power to set wages. This is the result of the legalization of business models like the fissured workplace that allow powerful employers to segregate workers from the profits they earn for their bosses. The point of Part II of this paper is that the fissured workplace is the product of both labor regulation and antitrust. Thus, increasing inequality of power between employers and workers cannot be coherently treated as two separate phenomena: rising employer power, and declining worker power.

That means the solution to unequal bargaining power is not necessarily or not entirely an antitrust solution, but antitrust must play a major part, since it implicates the business models available to the economy’s dominant firms. In particular, we should seek, through revived antitrust and labor regulations that both take account of how the economy actually works, and how power is exercised within it, to re-establish the sharp distinction embodied in Richfield Oil. Either workers are employees, in which case they can be controlled by their bosses, who in turn owe them statutory protections including the right to bargain collectively, or they are independent businesses, in which case they cannot be coerced by contract or by any other means. Proposals to extend and strengthen labor law tests for statutory employment to take account of gig economy technologies are crucial, but they will be ineffective so long as employers and lead firms retain the strong incentive to push workers outside their protection. The role of antitrust in that context is to create a significant cost to so doing: the potential for treble damages under antitrust liability should a lead firm be caught coordinating and directing the activities of its non-employee subsidiaries and contractors. That is the mechanism that would weigh against employers’ incentive to mis-classify.

Putting such an antitrust regime in place entails the abandonment of both the consumer welfare standard and, with it, the Chicago School’s jurisprudence of vertical restraints. Instead, any vertical restraint, price or non-price, should be a presumptive violation of the Sherman Act if it is imposed by a firm with market power. And antitrust’s definition of market power must, in turn, be expanded beyond the confined market-share-based Sherman Act jurisprudence to instead take account of the many ways economists have of testing for the existence of market power. Firms would be judged to have market power if they:

• Have the power to unilaterally raise prices for their customers or lower them for their suppliers, including workers;

• Wage- or price-discriminate among customers, suppliers, or workers;

• Unilaterally impose non-price, uncompensated contractual provisions on their counterparties, like non-compete agreements in labor contracts;

• Impede or control entry by would-be competitors; or

• Earn profits and/or make payments to their shareholders at a rate in excess of their market cost of capital.

All of these things are economic indicia of market power because they could not be done by any one or more firms acting in concert in the face of competition from rivals—therefore they should be legal indicia of market power as well.96

Drilling down on how the antitrust laws should target labor market monopsony in particular, not merely prohibit vertical restraints that enable fissured workplace-style business models, the antitrust authorities should bring a monopsonization suit against an online labor platform like Uber that fixes wages and imposes exclusivity on independent businesses, along the lines of Meyer v. Kalanick. If, as would be expected, that case would be adjudicated under the Rule of Reason, despite its economic equivalence to the FTC’s per se cases against professional organizations and unions of independent contractors, then Congress should streamline the Rule of Reason for labor monopsony. This should be done along the lines proposed by Ioana Marinescu and Eric Posner, setting out principles to guide market definition that are responsive to measured firm-level labor supply elasticities.97 In fact, if firms have the unilateral power to dictate wages without causing a significant share of their workforce to leave, then the proper market definition for a monopsonization case may be significantly smaller than the one those authors recommend as a baseline. The point of such a suit is to force Uber to choose one business model or another: either employ the drivers if Uber wants to fix their wages and monitor them on the job, or give up the price- setting and market coordination power that makes the platform such a value proposition for its investors. It cannot be allowed to do both. Meanwhile, workers themselves who are not statutory employees should be protected by antitrust’s labor exemption and should be permitted to bargain collectively. However, any such extension of the labor exemption must not also immunize the powerful employer against whom they would seek to bargain. And at the very least, both no-poaching clauses in franchising contracts and non-compete clauses in employment contracts should be illegal per se.98

Finally, analysis of labor market impact should be incorporated in the statutory prospective merger review process that federal agencies undertake as a matter of routine, in order to prevent the harmful accumulation of monopsony power in labor markets by merger. The current FTC Chairman, Joseph Simons, said as much in Congressional testimony in the fall of 2018,99 but to date there is no evidence that any such investigation has taken place. In the recent merger approval for Staples’s takeover of its supplier Essendant, the majority of the commission claimed that the merger would have a pro-competitive impact on input markets.100 Specifically, if the combined firm reduced the price it pays to manufacturer, it would in fact purchase more from them, not less, and hence that price reduction would not be an exercise of buyer power (the majority’s opinion says nothing about labor specifically as an input). But the idea that the volume of sales is dispositive about the anti-competitive exercise of monopsony power is not correct. Wilmers finds evidence that dominant retailers and manufacturers impose price reductions on the suppliers over whom they exercise market power, and those suppliers in turn pass those price reductions through to their workers in the form of lower wages.101 That is an exercise of monopsony power, but it might well be accompanied by greater sales volume from the supplier to the dominant customer.

Altogether, the thesis of this paper is that there is no way to confront the economy’s crisis of unequal bargaining power without confronting the role that antitrust has played in getting us there. Antitrust is not a substitute to any of the many other ways that policy ought to be extended to halt and reverse the economy-wide erosion of worker bargaining power behind rising inequality and wage stagnation. But strengthening it is a necessary condition for the success of many of those alternatives, notably, labor law reform and collective bargaining on the part of precariously employed gig economy workers.

### lpe k---2ac

#### 6---Economics is improving with instantaneous information---imperfections are DAs to alternative systems not rules-based antitrust.

The Economist 10/23/21. "A real-time revolution will up-end the practice of macroeconomics". Economist. https://www.economist.com/leaders/2021/10/23/a-real-time-revolution-will-up-end-the-practice-of-macroeconomics?utm\_campaign=the-economist-this-week&utm\_medium=newsletter&utm\_source=salesforce-marketing-cloud&utm\_term=2021-10-21&utm\_content=ed-picks-article-link-1&etear=nl\_weekly\_1

Yet, as we report this week, the age of bewilderment is starting to give way to greater enlightenment. The world is on the brink of a real-time revolution in economics, as the quality and timeliness of information are transformed. Big firms from Amazon to Netflix already use instant data to monitor grocery deliveries and how many people are glued to “Squid Game”. The pandemic has led governments and central banks to experiment, from monitoring restaurant bookings to tracking card payments. The results are still rudimentary, but as digital devices, sensors and fast payments become ubiquitous, the ability to observe the economy accurately and speedily will improve. That holds open the promise of better public-sector decision-making—as well as the temptation for governments to meddle.

The desire for better economic data is hardly new. America’s gnp estimates date to 1934 and initially came with a 13-month time lag. In the 1950s a young Alan Greenspan monitored freight-car traffic to arrive at early estimates of steel production. Ever since Walmart pioneered supply-chain management in the 1980s private-sector bosses have seen timely data as a source of competitive advantage. But the public sector has been slow to reform how it works. The official figures that economists track—think of gdp or employment—come with lags of weeks or months and are often revised dramatically. Productivity takes years to calculate accurately. It is only a slight exaggeration to say that central banks are flying blind.

Bad and late data can lead to policy errors that cost millions of jobs and trillions of dollars in lost output. The financial crisis would have been a lot less harmful had the Federal Reserve cut interest rates to near zero in December 2007, when America entered recession, rather than in December 2008, when economists at last saw it in the numbers. Patchy data about a vast informal economy and rotten banks have made it harder for India’s policymakers to end their country’s lost decade of low growth. The European Central Bank wrongly raised interest rates in 2011 amid a temporary burst of inflation, sending the euro area back into recession. The Bank of England may be about to make a similar mistake today.

The pandemic has, however, become a catalyst for change. Without the time to wait for official surveys to reveal the effects of the virus or lockdowns, governments and central banks have experimented, tracking mobile phones, contactless payments and the real-time use of aircraft engines. Instead of locking themselves in their studies for years writing the next “General Theory”, today’s star economists, such as Raj Chetty at Harvard University, run well-staffed labs that crunch numbers. Firms such as JPMorgan Chase have opened up treasure chests of data on bank balances and credit-card bills, helping reveal whether people are spending cash or hoarding it.

These trends will intensify as technology permeates the economy. A larger share of spending is shifting online and transactions are being processed faster. Real-time payments grew by 41% in 2020, according to McKinsey, a consultancy (India registered 25.6bn such transactions). More machines and objects are being fitted with sensors, including individual shipping containers that could make sense of supply-chain blockages. Govcoins, or central-bank digital currencies (cbdcs), which China is already piloting and over 50 other countries are considering, might soon provide a goldmine of real-time detail about how the economy works.

Timely data would cut the risk of policy cock-ups—it would be easier to judge, say, if a dip in activity was becoming a slump. And the levers governments can pull will improve, too. Central bankers reckon it takes 18 months or more for a change in interest rates to take full effect. But Hong Kong is trying out cash handouts in digital wallets that expire if they are not spent quickly. cbdcs might allow interest rates to fall deeply negative. Good data during crises could let support be precisely targeted; imagine loans only for firms with robust balance-sheets but a temporary liquidity problem. Instead of wasteful universal welfare payments made through social-security bureaucracies, the poor could enjoy instant income top-ups if they lost their job, paid into digital wallets without any paperwork.

The real-time revolution promises to make economic decisions more accurate, transparent and rules-based. But it also brings dangers. New indicators may be misinterpreted: is a global recession starting or is Uber just losing market share? They are not as representative or free from bias as the painstaking surveys by statistical agencies. Big firms could hoard data, giving them an undue advantage. Private firms such as Facebook, which launched a digital wallet this week, may one day have more insight into consumer spending than the Fed does.

Know thyself

The biggest danger is hubris. With a panopticon of the economy, it will be tempting for politicians and officials to imagine they can see far into the future, or to mould society according to their preferences and favour particular groups. This is the dream of the Chinese Communist Party, which seeks to engage in a form of digital central planning.

In fact no amount of data can reliably predict the future. Unfathomably complex, dynamic economies rely not on Big Brother but on the spontaneous behaviour of millions of independent firms and consumers. Instant economics isn’t about clairvoyance or omniscience. Instead its promise is prosaic but transformative: better, timelier and more rational decision-making. ■

#### Growth is sustainable, the alt fails, and collapses global living standards.

Noah Smith 9/6/21. Assistant Professor of finance @ SUNY Stony Brook, an economics PhD student at the University of Michigan, an academic editor in Japan, and a physics major at Stanford. “People are realizing that degrowth is bad.” https://noahpinion.substack.com/p/people-are-realizing-that-degrowth

I was going to write a lengthy post explaining why “degrowth” — the idea that we need to halt economic growth in order to save the planet — is a very bad idea. But in the meantime, other people have written that post, or recorded that podcast, and done it well. These include Branko Milanovic, Kelsey Piper, and Ezra Klein. So instead I’ll write a shorter post trying to catalog and boil down the arguments against degrowth.

But first, let’s go over the standard argument, so we can see why these new arguments are necessary.

The standard argument against degrowth

First, note that the typical argument against degrowth, which I laid out in a Bloomberg post a while back, is that we don’t need it; we can raise human living standards without exhausting the planet. This argument was capably put forward by Andy McAfee, in his excellent book More From Less, which you should buy and read. Essentially, the idea that economic growth requires growth in resource use is false; rich countries have started to grow while using less and less of the planet’s most important resources. For example, here is U.S. use of fresh water and various metals, as well as trade-adjusted carbon emissions:

[Chart, bar chart

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So the idea here is that we don’t need degrowth; instead, we can keep raising everyone’s standard of living without exhausting the planet’s resources. Because growth doesn’t just mean using more and more stuff; instead, it can mean finding more efficient ways to use the stuff we have.

Degrowthers have two counters to this. Their first counter, typically, is to show a graph of resource use for the entire world, and show that it’s correlated with global growth. This is a weak response, for two reasons:

1. Degrowthers have no idea how to combine various resources into an overall measure of resource use, so they typically go with gross weight. This is absurd, since some materials are recyclable and others are not — if you “use” a ton of copper you still have the copper, whereas if you “use” a ton of oil, your oil is gone. It’s also absurd because it doesn’t take into account the relative abundance of resources — if you figure out how to substitute 2 tons of sand for 1 ton of oil, you’re getting more efficient, since sand is much more plentiful than oil (and doesn’t pollute as much when you use it). A lot of growth is figuring out how to substitute plentiful resources for rare ones, and simply adding up gross tonnage ignores this.
2. Past trends are no guarantee of future trends. Until the 70s, for instance, U.S. economic growth was closely correlated with both energy use and carbon emissions; after the 70s, this correlation broke down completely and the lines started moving in opposite directions. Degrowthers present historical curves as if these are laws of nature, but we know that they are not. The trend is your friend only til the bend at the end. And the fact that rich countries have hit an inflection point where economic growth no longer depends on growing resource use is a strong indicator that industrializing countries like China will also hit this point as well. (And no, falling use in rich countries is mostly not due to outsourcing, as the emissions graph above illustrates.)

So this degrowther argument is just wrong. But degrowthers have a second, far better counter to McAfee’s notion that we can have our cake and eat it too: Decoupling isn’t happening fast enough. If we wait for China and India and all the countries of Africa to industrialize in a resource-intensive way like today’s developed countries did, and then to dematerialize their growth like today’s developed countries are doing now, it will be far too late and the planet will suffer ecological catastrophe.

This argument isn’t as strong as it sounds — China and India and the rest will be able to take advantage of the efficiency-inducing technologies created by the developed countries, like solar power (indeed, they are already doing so). And they will be able to embrace “dematerialized” goods and services like social networks and video games (sorry, Xi Jinping) very early in their growth path. So these countries’ resource use trajectories won’t look quite like the U.S.’ or Europe’s.

But this degrowther argument does contain a nugget of truth: Global resource use is currently on an unsustainable trajectory. Here, via Zeke Hausfather, are the current projections for global warming by century’s end, even with the advances in techologies like solar:

[CHART OMITTED]

Any one of these scenarios represents utter global catastrophe.

So even if there is a sustainable growth path, we are not currently on it. About this, degrowthers are right; a gentle, natural transition to green growth is possible, but is an unaffordable luxury. But degrowthers’ prescription is the wrong one.

The reason, in a word, is politics. The kind of massive intention reordering of global production and consumption that degrowthers fantasize about is not just pragmatically impossible to implement, it’s the kind of thing that essentially everyone in the world except for a few very shouty people in Northern Europe and the occasional Twitter activist is going to reject. To see why, let us turn to the excellent articles/podcasts by Milanovic, Piper, and Klein.

The political argument against degrowth

Milanovic actually has two excellent posts on the topic of degrowth. In the first one, he lays out why forcing developing countries to stay in poverty would be bad:

Let us suppose, for the sake of the argument, that we interpret “degrowth” as the decision to fix global GDP at its current level…Then, unless we change the distribution of income, we are condemning to permanent abject poverty some 15 percent of world population that currently earn less than $1.90 per day and some quarter of humankind who earn less than $2.50 per day…Keeping so many people in abject poverty so that the rich can continue to enjoy their current standard of living is obviously something that the proponents of degrowth would not condone.

Enforcing global degrowth would require freezing world income at about $17,000/year. That means that most people in the world would never even come close to current rich-world living standards — instead, they would at best only be able to reach the level currently enjoyed in China or Botswana. Perhaps that’s not such a horrible fate, but as Milanovic notes, this would require impoverishing most of the population of developed countries. He elaborates on this point in his new post, pulling no punches:

[In order to avoid keeping most of the world in poverty, degrowthers must] introduce a different [income] distribution (B) where everybody who is above the current mean world income ($PPP 16 per day) is driven down to this mean, and the poor countries and people are, at least for a while, allowed to continue growing until they too achieve the level of $PPP 16 per day. But the problem with that approach is that one would have to engage in a massive reduction of incomes for…practically all of the Western population. Only 14% of the population in Western countries live at the level of income less than the global mean…Degrowers thus need to convince 86% of the population living in rich countries that their incomes are too high and need to be reduced….It is quite obvious that such a proposition is a political suicide.

Milanovic quite rightly waves away degrowthers’ protestations that GDP is not a good measure of human welfare. GDP isn’t perfect, he notes, but it’s close enough where the basic point stands.

Demanding that people in rich countries accept absolutely catastrophic declines in their living standards is a political non-starter. Klein, on his podcast, tries to point this out as gently as possible:

I think that if the political demand of the [degrowth] movement becomes you don’t get to eat beef, you will set climate politics back so far, so fast, it would be disastrous. Same thing with S.U.V.s. I don’t like S.U.V.s. I don’t drive one. But if you are telling people in rich countries that the climate movement is for them not having the cars they want to have, you are just going to lose. You are going to lose fast…This is where the politics of [degrowth] for me fall apart…

I just don’t see the argument for degrowth as being anything but an extraordinarily slower way of approaching the politics, probably counterproductive compared to what we’re doing, which is I think you can make tremendous strides on climate change by deploying renewable energy technologies and giving people the opportunity to have a more materially fulfilling life atop those technologies.

Milanovic is less gentle, calling this “outright magical thinking”. He is correct. When you look at how much people in America are willing to sacrifice in terms of their material well-being in order to fight climate change, it’s far less than what Klein is talking about. And Klein is really softballing it here — it’s not just giving up beef and SUVs, it’s a dramatic reduction in the size of housing and the amount of food and the ease of transportation and the quality of medical care that people in rich countries enjoy. It is, frankly, not happening.

But even this vastly understates the political and practical difficulties of degrowth. Piper adds several key points. First of all, she notes, because developed countries have been decoupling resource use and growth for a while now, curbing resource use will actually cause a lot more restrictions on developing countries than Milanovic’s simple calculations would suggest:

From a climate change perspective, though, there’s a problem [with simply reducing rich-world living standards]. First, it means that degrowth would do nothing about the bulk of emissions, which are occurring in developing countries.

This is an incredibly important point. For example, China now produces more CO2 emissions than the U.S., the EU, and Japan combined:

[Chart, line chart

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(And no, this is not because of outsourcing, as you can see by looking at the trade-adjusted emissions numbers.)

Another way of looking at this is that China’s CO2 emissions per dollar of GDP are more than twice America’s, and about five times that of the EU. Any global degrowth plan that actually reduces resource use is going to entail more pain for China than its GDP numbers would suggest, simply because China is at a more resource-intensive stage of growth.

Do you think China will accept a substantial diminution of its living standards, in order to satisfy the environmental-economic diktats of activists in Northern Europe? If so, you need to rethink a great many things.

Anyway, Piper makes a second crucially important point. So far we’ve been waving our hands and talking about lowering rich-world GDP while raising GDP for poor countries. In fact, economies don’t work like that:

Second, the global economy is more interconnected than Hickel implies. When Covid-19 hit, poor countries were devastated not just by the virus but by the aftershocks of virus-induced slowdowns in consumption in rich countries.

There’s some genuine appeal to the idea of an end to “consumerism,” but the pandemic offered a taste of how a sudden drop in rich-world consumption would actually affect the developing world. Covid-19 dramatically curtailed Western imports and tourism for a time. The consequences in poor countries were devastating. Hunger rose, and child mortality followed.

Degrowth would thus require deep changes in the entire way that the global economy works. Change happens, but not like that; implementing the kind of reallocation schemes that degrowthers throw around with abandon would require global economic planning that would put Gosplan to shame. Klein points this out, again rather gently:

Degrowth is, as its advocates understand it, a act of global economic planning really without equal anywhere in human history. It is an act of extraordinary central planning.

In other words, it is abject fantasy.

Taken together, these criticisms are utterly devastating to the entire degrowth project. In its current form, it will not advance beyond a media fad. No matter how shrilly degrowthers quote apocalyptic projections, the things they call for simply will not happen.

### Economy da---2ac

#### 2---wage increases offset any inflationary burden.

Jeff Spross 18. The economics and business correspondent at TheWeek.com, has written for the policy journal Democracy. 3/23/18. https://theweek.com/articles/761749/when-higher-interest-rates-are-actually-good

Like a bodybuilder gradually taking on heavier weights, the economy can shoulder higher interest rates the stronger it becomes. Think about it at the individual level: Higher interest rates on home loans and credit cards worry us because wages have been stagnant for decades; because good jobs are scarce, financial insecurity is widespread, and inequality is soaring. That scares individuals and families, but it also scares businesses. They need confident consumers out there with money to burn. That way, when businesses borrow to expand storefronts and hiring, they know the investment will pay off. In a world where wage growth was high (especially for the lowest earners), where good jobs were abundant, and where wealth and incomes were broadly shared across the economy, what counted as "affordable" interest rates would be much different.

In fact, during the famous job and wage boom of the late 1990s, interest rates ranged between 5 and 6 percent. During the economic recoveries of the Reagan years, they got over 8 percent.

#### 4---High wages don’t cause inflation.

Dr. Roy Cordato 18. Senior Economist, Emeritas. “The Myth of “Wage Push” Inflation” John Locke Foundation. 10-25-18. https://www.johnlocke.org/update/the-myth-of-wage-push-inflation/

Now, this doesn’t mean that we may not be seeing increased inflation over the coming months or years. For well over a decade, the Fed has been pursuing a policy of easy money. That’s what the talk of interest rates approaching zero and so-called “quantitative easing” has been all about. The fears of inflation that are all the chatter among the business commentator class are real and justified. What is **wrongheaded is the explanation that it might be caused by increased wages.** This also doesn’t mean that rising wages in certain sectors couldn’t be part of the story of how the new Fed-created money is working its way through the economy. New money flows from the Fed through the banks and into the economy unevenly. Therefore, **prices and wages are also bid up unevenly.** So, as different sectors of the economy receive the new money, possibly through new investment stimulated by the artificially low-interest rates, wages will rise. This, in turn, may lead to those wage earners having more money to spend on goods and services, which will drive up prices generally. But the **higher wages are not the cause of the inflation but a symptom of it.** The **idea that higher wages can cause inflation is simply bad economics**. It is part of the same discredited Keynesian analysis that tells us that government budget deficits create economic growth and that increased saving reduces it. As a wise graduate school professor of mine once told me, to ignore changes in money supply when trying to explain inflation is the equivalent of ignoring the eruption of Mount Vesuvius when trying to explain the destruction of Pompeii.

#### 5---Rate hikes now, and they’re priced in---limits any negative impact.

Wayne Duggan 12/28. Benzinga Staff Writer. “Why A Federal Reserve Interest Rate Hike Could Be Closer Than You Think.” 12/28/21. https://www.benzinga.com/analyst-ratings/analyst-color/21/12/24795613/why-a-federal-reserve-interest-rate-hike-could-be-closer-than-you-think

The U.S. Federal Reserve confirmed investor suspicions in December that multiple interest rate hikes are likely coming in 2022. The bond market is now pricing in the potential for the first rate hike to come sooner than many investors may realize.

Probability Rising: According to CME Group, the bond market is now pricing in a 56.5% chance the Fed will raise rates at its March 2022 meeting. While a 56.5% probability is far from certain, the probability of a March rate hike has been rising quickly in recent weeks, up from just 18.8% a month ago.

In December, the Fed said it now anticipates three rate hikes by the end of 2022, which would potentially raise the target Fed funds rate from its current target range of between 0% and 0.25% to a new target range of between 0.75% and 1%. The bond market is now pricing in a 33.9% chance the year-end target range will be between 1% and 1.25% or higher.

The March 2022 Fed meeting is less than 80 days away, which means investors may be contending with rising interest rates sooner rather than later.

The Good News: DataTrek Research co-founder Nicholas Colas said Tuesday the recent bullish price action in the SPDR S&P 500 ETF Trust SPY +0.13% + Free Alerts is good news for investors that more hawkish monetary policy actions may not disrupt the stock market. Investors may even welcome more aggressive rate hikes as the appropriate response to concerningly high inflation levels.

#### 6---Inflation’s high now.

Peter Santilli & Gwynn Guilford 12/17. \*\*Visual editor for finance at The Wall Street Journal. \*\*Economic reporter at The Wall Street Journal. “Inflation Is Near a 40-Year High. Here’s What It Looks Like.” 12/17/21. https://www.wsj.com/articles/inflation-is-near-a-40-year-high-heres-what-it-looks-like-11639737004

U.S. inflation climbed to a 39-year high in November, as strong consumer demand collided with supply constraints. Overall, the level of consumer prices leapt 6.8% last month from a year earlier, the Labor Department said.

But prices didn't change at the same rate for all goods and services. A surge in prices for gasoline and other energy sources, along with prices for cars, have been the primary drivers of this year's inflation burst. Meanwhile, prices for services like education and medical care rose just slightly.

Much of these differences are the result, in one way or another, of the Covid-19 pandemic. This year's explosive growth in auto prices is due largely to a semiconductor shortage, which was caused in part by the pandemic but also by trade policy. Much of the rise in food and energy prices comes down to pandemic-related production problems, though also to weather and geopolitical factors. Prices for airline fares and hotels have tended to swing with Covid-19 infection rates, as consumers adjust travel plans to their risk of getting sick.

Still, inflation in prices of many goods and services hit multidecade highs in November, regardless of the differing underlying factors.

The highs signal that price pressures are broadening beyond the goods and services directly affected by Covid and related supply-chain bottlenecks. For example, apparel prices began picking up early in the pandemic, after a long deflationary stint. Housing costs are also climbing, driven by a leap in prices for home energy, furniture and, increasingly, rent.

This broadening of price pressures is important because it could signal that inflation will remain elevated into 2022 and beyond -- even after Covid-related disruptions abate.

#### Big Tech isn’t innovative, it’s replacing innovative startups.

Alexis C. Madrigal 20. a contributing writer at The Atlantic, a co-founder of the COVID Tracking Project. "Silicon Valley Abandons the Culture That Made It the Envy of the World." Atlantic. 1-15-2020. https://www.theatlantic.com/technology/archive/2020/01/why-silicon-valley-and-big-tech-dont-innovate-anymore/604969/

But there’s a more troubling possibility. Maybe something has changed about the nature of innovation, at least in software.

The start-up tradition traces back to Hewlett-Packard, the original company-in-a-garage, in 1937, and later to the Fairchildren of the 1960s, a tangle of semiconductor companies that successively spun out of larger companies, one after the other. The go-your-own-way ethos infused later cohorts of entrepreneurs across the spectrum of technologies, all the way up through the 20th century. The best thing you could be in Silicon Valley was a founder, and the best thing a founder could do was supercede those who came before.

The newest generation of companies has not been able to fulfill the latter half of that prophecy. It’s more difficult to dislodge the elder companies, which have grown ever more entrenched and valuable. CB Insights, a research firm, recently added up the (likely inflated) value of all 439 “unicorns”—start-ups that investors have valued at more than $1 billion—in the world. It got roughly $1.3 trillion, or about one Apple’s worth of market value. Remember, that figure accounts for hardly tech companies, such as Juul; so-far dubious technologies, such as augmented-reality headsets from Magic Leap (valued at $6.3 billion on this list); and all the Chinese and Indian players.

For start-ups not on the unicorn list—and even for many that are—the chance that they will have an initial public offering and remain independent is small. That means the only way their investors will get their money out will be via an acquisition by one of the large companies. Google, Facebook, and their ilk “have become enormous by swallowing small companies, so the network is no longer the network but the octopus,” Margaret O’Mara, a historian at the University of Washington, told me.

This could alter the course of technological development, not just corporate structures. Quantitative research suggests that big companies do different kinds of R&D than their more modest counterparts. Instead of coming up with new products, they come up with process improvements. “If the nature of innovation is distorted toward selling to an incumbent, you’re going to get more feature-driven innovation rather than systemic disruption,” Federal Trade Commissioner Rohit Chopra told me. As an example, O’Mara told me a story famous in Silicon Valley about how Xerox had a personal computer in its hands in the 1970s (thanks, Alan Kay!) but declined to commercialize it. “You get to a certain degree of bigness, and you’re making so much darn money on copy machines, why on Earth would you work on a PC and bring it to market?” O’Mara said. Apple, a start-up at the time, would famously popularize PCs instead.

Even though small firms have been responsible for many of the Valley’s most successful products and services, large firms have deep roots there too. As O’Mara points out in her book The Code, Lockheed Missiles and Space (later a unit of Lockheed Martin) was the largest Silicon Valley employer from the 1950s into the 1980s. The government supported the development of computing and networking in myriad ways. During the Cold War, the U.S. government pushed research dollars through a select few major research universities such as Stanford. Local companies directly benefited from this largesse, in terms of both the funding and concentration of talent around Palo Alto. It wasn’t until the 1970s that the military-industrial beginnings of the technology industry gave way to a different understanding of how to make change in the world.

“The story the Valley told about itself has been very much a small-is-beautiful story since the 1970s,” O’Mara told me. “It has a politics—this Vietnam-era rejection of the military-industrial complex, rejection of the mainframe, Big Business, Big Government, big universities.”

This led people to take risks and launch new projects and firms. Entrepreneurs from all over the world migrated to a place where people understood why they wanted to start companies. And the idea even embedded itself right near the heart of the Valley, at Google. The company’s slogan, “Don’t be evil”, had a particular meaning when it was adopted around the millennium. In the classic Valley mind-set, “evil is bigness of all kinds,” O’Mara said.

Now, of course, “the mainframe” has been replaced by the cloud, and companies such as Facebook have openly called for government regulation around key platform issues. The biggest companies moved closer and closer to Washington, D.C., during the Obama era, and despite some teeth-gnashing, stayed close after Donald Trump’s election.

#### No link---consumers are still considered.

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>

Monopsony continues to **challenge antitrust law** despite Weyerhauser. Given that anticompetitive agreements among employers benefit one group of consumers (customers) while hurting another consumer group (workers), antitrust law forces courts to weigh the interests of these two groups of consumers against one another. Weighing the interests of two groups of consumers is complex and requires courts to choose whose economic welfare matters more. Currently, courts are **improperly allowing monopsonists to engage in anticompetitive conduct** merely because it results in lower prices.167 Currently, courts directly weigh the welfare of both customers and workers against each other. Because antitrust law traditionally focuses on customers and anticompetitive conduct in labor markets causes lower prices, direct comparison of the welfare is insufficient. Extending the antitrust history of partial equilibrium analysis, I propose that courts consider the welfare of workers first, then **customers’ welfare only if workers experience a de minimis harm**. This proposal **appropriately weighs the interests of workers against customers** who receive a price cut from monopsonistic conduct. Further, this proposal **sits well with antitrust law’s long history** of providing different treatment to anticompetitive conduct in labor. This rule does not solve every problem that a mirror treatment of monopoly and monopsony creates. Yet, this solution both operates within the established Weyerhauser framework to apply current antitrust standards in new ways and pursues antitrust law’s goal of protecting competitive markets.

### Court clog da---2ac

#### 1---Won’t clog the courts.

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

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

#### 3----Courts clogged now---covid, backlogs, vacancies

Meagan Flynn & Michael Brice-Saddler, 1/1. Meagan Flynn covers the Virginia, Maryland and D.C. congressional delegations on The Post's Metro team. She was previously a reporter at the Houston Press and the Houston Chronicle. Michael Brice-Saddler covers D.C. government and politics for The Washington Post's Metro desk. He joined The Post in June 2018 as an intern after graduating from the University of Maryland. “D.C. courts ‘sound the alarm’ on judicial vacancies as local officials demand movement in Senate.” January 1, 2022. https://www.washingtonpost.com/dc-md-va/2022/01/01/dc-judges-vacancy-senate/

He noted that the D.C. Superior Court has the distinction among the nation’s trial courts of having the highest number of case filings per capita in the United States. There are more than 10,000 criminal cases pending, more than doubling 2020′s case load, he noted. The coronavirus pandemic added an additional challenge; jury trials resumed in the spring after being suspended for roughly a year. D.C. Council member Charles Allen (D-Ward 6), who chairs the council’s judiciary committee, said the vacancies cause delays in justice for perpetrators, victims and survivors, and he added that some people have been waiting for trial in the D.C. jail for a longer period of time than they would serve if they were convicted. “This is a massively dysfunctional part of our criminal justice system, which is already dysfunctional because of so many federally controlled elements,” Allen said. “When you add on top of it a massive case backlog in the months and years to come, it puts our entire criminal justice system at a massive disadvantage.” Jurors in a fire station, high school gym and the ‘Cow Palace.’ How Maryland is restarting jury trials in the pandemic. Allen stressed that the challenges created by the vacancies aren’t just limited to criminal cases; other judicial matters involving families, estates and marriages are also affected. Beverly L. Perry, senior adviser to Mayor Muriel E. Bowser (D), said judges have had to shuffle around their schedules to accommodate cases they wouldn’t otherwise be hearing. She said she recently learned Superior Court judges typically have 200 cases or fewer on their docket, but now have 300 to 400. “A criminal judge might be handling a family court calendar — this problem keeps escalating,” Perry said. Perry applauded Norton’s legislation, noting its similarity to how local D.C. legislation can be passively approved by Congress if there is no action after 30 working days. “It’s one of those things that should be perfunctory, it shows another reason we should be a state — and it shows how people that have disregard for our city can create a harmful outcome,” Perry added. “It exemplifies how we have no voice in the Senate at all.” The Senate Homeland Security and Governmental Affairs Committee scrutinized problems created by the vacancies during a recent hearing for three judicial nominees last month, and Chairman Gary Peters (D-Mich.) highlighted these problems in his opening remarks. When Sen. James Lankford (R-Okla.) asked the three nominees what they thought the biggest problems were facing the D.C. courts, Court of Appeals nominee Loren L. AliKhan, the D.C. solicitor general, described the backlog as “the first-, second-, third- and fourth-biggest problem facing the District.”

#### 7---Google and Facebook antitrust cases thump.

Mike Scarcella, 7-29. Reuters columnist who produces a weekly running article called “this week in antitrust.” “Court panel weighs Google bid to move advertising antitrust cases.” July 29, 2021. https://www.reuters.com/legal/litigation/court-panel-weighs-google-bid-move-advertising-antitrust-cases-2021-07-29/

(Reuters) - Lawyers for Google LLC and Facebook Inc on Thursday urged the Judicial Panel on Multidistrict Litigation to transfer dozens of digital advertising-related antitrust lawsuits they are facing to California federal court, over opposition from some plaintiffs' lawyers who argued centralization would unfairly **slow down proceedings in pending cases around the country**. Lawsuits filed by U.S. states, publishers, advertisers and small businesses contend online advertising practices at Google and Facebook have unlawfully stifled competition and harmed consumers and companies. Google and Facebook want the cases moved to the U.S. District Court for the Northern District of California, **where the largest number of related lawsuits are pending**. Google's lawyer, Eric Mahr, co-leader of the antitrust group at Freshfields Bruckhaus Deringer, told the JPML that failure to centralize the cases would raise the possibility of "inconsistent rulings" from district judges. Representing Facebook, Kevin Orsini, co-head of the litigation department at Cravath, Swaine & Moore, backed Google's argument for centralization in California, where both companies are based. Girard Sharp partner Jordan Elias, advocating for an advertiser class, argued against centralization. The cases in district courts are at different stages, he said. "Judicial economy favors not interfering with these ongoing proceedings," he said. Discovery, he argued, could be coordinated without merging the cases. U.S. District Judge Matthew Kennelly of the Northern District of Illinois, serving on the JPML, questioned Elias about how some of the class members he is representing mirror plaintiffs in the complaint Texas Attorney General Ken Paxton and a group of other state attorneys general filed in December against Google in the U.S. District Court for the Eastern District of Texas. "How does it make sense to have these two cases, which basically overlap, in two different places?" Kennelly said. "The opposition of you folks and some of the other folks on the plaintiffs' side to centralization in this case is a little bit perplexing. In virtually every other situation we've had before us, you guys are out in front asking us to centralize it." Plaintiffs lawyer Mark Lanier, counsel to Texas and other states, said his argument against centralization was the first in his career. "Speed really is important here," he told the panel. Texas and state plaintiffs have "been intensely involved in this," Lanier said. "We've got over 2 million documents. We've got documents and information from 25 third-parties at this point." Lanier's briefing to the panel had raised an issue about venue pointing to new bipartisan federal legislation introduced in May that would exempt antitrust actions brought by state attorneys general from motions to transfer. He urged the JPML to exclude the states' lawsuit against Google from any transfer order, or "respect the states' choice of forum by centralizing all Google ad tech litigation in the Eastern District of Texas." The effective date of the law, if it's enacted, is June 1

#### 8---misdemeanor cases

Michele Hall, 20. works as a public defender in Maryland. “Dismiss Minor Misdemeanors During the Pandemic.” August 15, 2020. https://www.theatlantic.com/ideas/archive/2020/08/dismiss-minor-misdemeanors-during-pandemic/615301/

Even as the pandemic has forced this country to rethink seemingly every facet of American life, the criminal courts continue the routine processing and prosecution of petty misdemeanor crimes. My co-workers have had to appear in court to represent clients on traffic cases, charges of simple drug possession, disorderly conduct, and other misdemeanors. But this business-as-usual approach to minor offenses is immoral and dangerous. People charged with misdemeanors during the pandemic should receive amnesty. Nearly 13 million **misdemeanor cases clog American criminal-court dockets every year**. Black and brown people are disproportionately charged with these offenses, which largely arise from housing instability, poverty, and racist policing practices. The country punishes people for actions taken in the furtherance of survival, and in the throes of addiction and mental-health struggles. The process of charging, arresting, prosecuting, and punishing these types of offenses does nothing to deter future conduct, because it does nothing to change the material conditions and structural inequities that affect the lives of the accused every day. Because many trials were on hold through the spring and early summer, the already-overloaded **caseload has only swelled**. Those who couldn’t afford or weren’t given bail have been languishing even longer than usual behind bars, many without a trial date. Now courts across Maryland have been slowly opening this summer. Those at home, who were released before and during the pandemic, are being called to return to the courthouse for their trial, risking their safety. Some of these cases will be dismissed in court; what used to simply cost people’s time now may cost their health too.

## 1ar

### Labor cp---1ar

#### Markets deficit – adaptation’s key.

Jon Sallet 18. Partner at Steptoe. Previously, he was General Counsel of the Federal Communications Commission and Deputy Assistant Attorney General at the Antitrust Division. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century”. https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf

One, we will look at incipiency, actions that have not had the kind of competitive effect that he thought the Sherman Act examined. Secondly, because, he said, there will be new kinds of harm that we cannot anticipate. If we write a detailed list, we are going to miss some. So he wanted a standard that would evolve as economic issues as the facts evolved.

#### Comparative ev agrees.

Sanjukta Paul 19. An Assistant Professor of Law at Wayne State University and Visiting Professor of Law at the University of Minnesota. “The Constitutional Role of Economic Coordination Rights” 10-25-19. https://lpeproject.org/blog/the-constitutional-role-of-economic-coordination-rights/

No area of law has been more a fortress for L&E than antitrust law. (It has on occasion been imported directly from there into the courts’ understanding of the constitution—for example into First Amendment jurisprudence.) Therefore, **antitrust law is an important “way in” to dissecting this** conventional policy thinking about **labor coordination** (namely that absent some special showing it distorts ideal, welfare-maximizing market outcomes). And **antitrust’s intersection with labor is a particularly promising location** in which pulling on a few threads may help unravel a much larger portion of the framework. The reason for that is that **antitrust’s interaction with workers and labor markets** illustrates especially well how **antitrust, and law generally, allocates coordination rights**. The point here is not just to analogize the law’s treatment of capital and labor (“labor unions are like corporations”) to get to a normative conclusion. It’s to begin unraveling the idea, upon which L&E framework relies, that unmolested economic competition leads to welfare-optimizing outcomes … when that **framework selectively “sees” and disfavors** certain forms of economic coordination while selectively naturalizing others. **Antitrust law**, and L&E more generally, **naturalize the forms of economic coordination** embodied in the business firm, and also in a number of business arrangements controlled by powerful business firms. Labor coordination, by contrast, is both highly visible and disfavored in this analytic framework, even though it is nominally legalized by labor law and the labor exemption to antitrust law. One can see this ordering in the way that labor coordination and labor law are frequently **subordinated to** business coordination and (a particularly interpretation of) **antitrust law** in legal and policy debates about how to resolve uncertain questions of law. For an alternative way of approaching the allocation of economic coordination rights, one that is closer in worldview to the Law & Political Economy orientation, we might **look to** the origins of **antitrust law itself.** We can find an **affirmative alternate vision** in these origins, informed by the legal and market conditions of the time, that is in many ways opposed to the basic assumptions of antitrust thinking today.

### Economy da---1ar

#### No consensus – no one knows what CWS means, so FTC can’t successfulyt win cases, that’s advantage 2 and…

Maurice E. Stucke 11. Associate Professor, University of Tennessee College of Law; Senior Fellow, American Antitrust Institute. Reconsidering Antitrust’s Goals. The University of Tennessee College of Law. Research Paper #163 November 2011.

**1. No Consensus Exists on What Consumer Welfare Actually Means** In 1987, one scholar remarked that the terms efficiency and con- sumer welfare ““have become the dominant terms of antitrust discourse without any clear consensus as to what they exactly mean”” and that con- sumer welfare ““is the most abused term in modern antitrust analysis.””132 This remains true today.133 Although thirty of thirty-three countries in the 2007 ICN survey identified consumer welfare as an antitrust objective, most did ““**not specifically define consumer welfare** and appear[ed] to have **different economic understandings** of the term.””134 Similarly, the 2011 survey, although finding ““some agreement”” among the fifty-seven surveyed competition authorities, identified significant differences.135 Only **seven of the fifty-seven** authorities **agreed** with the provided definition of con- sumer welfare.136 Most (thirty-eight of the fifty-seven) antitrust authorities had ““no explicit definition”” of consumer welfare.137 Some considered consumer welfare as ““a natural result of enforcement activities but not necessarily an underlying goal.””138 Under this definition, antitrust enforcers promote consumer welfare whenever they act (or do not act). Others defined consumer welfare broadly to include ““safeguarding the competitive process,”” which in turn encompasses both price and non- price dimensions.139 France included ““enhancing the competitive process, . . . stimulating an efficient allocation of resources and preventing unchecked market power”” within its conception of promoting consumer welfare over the long-term.140 Competition authorities are not the only bodies who **disagree over the meaning of consumer welfare**. The U.S. Antitrust Modernization Commissioners (AMC), after three years, **could not reach unanimity on the term**.141 In 2007, the Commissioners issued a 449-page report on how ““antitrust law and enforcement can best serve consumer welfare in the global, high-tech economy that exists today.””142 But the debate be- fore and within the AMC was ““about the precise definition of ‘‘con- sumer welfare.’’””143 The ““[d]ebate continues over whether the Supreme Court implicitly adopted the goal of allocative efficiency or the goal of preventing wealth transfers as the standard by which consumer welfare should be measured.””144 Consequently, consumer welfare means different things to different people. As F.A. Hayek observed, the welfare of a people ““cannot be ade- quately expressed as a single end, but only as a hierarchy of ends, a comprehensive scale of values in which every need of every person is given its place.””145 Consumer welfare is not a well-defined goal but a generality that incorporates different social, political, economic, and moral values. Bork’’s definition of consumer welfare differs from that of other scholars.146 For Judge Patricia Wald and others, the phrase con- sumer welfare ““surely includes far more than simple economic effi- ciency.””147 Other academics discuss, within the definition of consumer welfare, maintaining allocative efficiency, preventing wealth transfers, and preserving consumer choice.148 Given the varying definitions of consumer welfare that exist, it is not surprising that **courts have reached inconsistent results based on their conception of consumer welfare.**149

#### Unquantifiable.

Maurice E. Stucke 11. Associate Professor, University of Tennessee College of Law; Senior Fellow, American Antitrust Institute. Reconsidering Antitrust’s Goals. The University of Tennessee College of Law. Research Paper #163 November 2011.

3. **Operational Difficulties** Some U.S. courts say that the ““reduction of competition does not invoke the Sherman Act until it harms consumer welfare.””155 This is nonsense. Courts **have not arrived at a shared, specific definition of consumer welfare.** Even if they did, courts cannot value, consistent with the rule of law, **how much competition can be reduced before harming consumer welfare.** One **rule of law concern** is that quantifying consumer welfare is itself **impracticable, if not impossible.** Twenty-eight percent of the countries in the 2011 ICN survey believed that quantifying consumer harm is ““not possible.””156 Of those who believed it possible to quantify detriment to consumer welfare, they all recognized **difficulties and limitations to such a quantification**.157 Thus, requiring an antitrust plaintiff to show when a reduction in competition harms consumer welfare is **illogical** when ““no easy, non-contestable, method for quantifying harm to consumer welfare”” currently exists.15

#### Plan attracts high skilled workers

Jen Schramm 2015. Jen Schramm is a senior strategic policy advisor in the AARP Public Policy Institute. “Which Benefits Attract Highly Skilled Workers?”. SHRM. 4/1/15. https://www.shrm.org/hr-today/news/hr-magazine/pages/0415-leveraging-benefits.aspx

As the economy improves, employees are moving back into the driver’s seat in the workplace. As a result, more companies are focusing on how to attract and retain the best talent for a range of positions that are increasingly difficult to fill. These positions include high-skilled technical jobs, professional jobs and jobs in fast-growing sectors such as health care. Official employment numbers have been fairly strong in recent months: January 2015 was the first time since January 2001 that there were more than 5 million job openings, according to the U.S. Bureau of Labor Statistics. At the same time, other indicators, such as the Society for Human Resource Management’s (SHRM’s) Leading Indicators of National Employment (LINE) recruiting difficulty index, suggest that it is getting harder to fill many key jobs. And surveys also show that employees are feeling more confident about quitting their jobs in favor of new opportunities—making it even more difficult for HR to keep the talent pipeline full. In response to these trends, employers are starting to get more strategic about benefits. While they’ve always leveraged benefits to attract and retain workers, to some extent they are now specifically targeting certain perks to highly skilled employees, according to a new survey from SHRM on the strategic use of benefits. SHRM’s 2014 Strategic Benefits Survey found that, overall, employers are still using traditional benefits—including health care, retirement savings and professional development opportunities—most often to recruit both highly skilled employees and those at all levels of an organization. Health care was the most leveraged benefit for recruiting both categories. But the picture changed slightly when the researchers looked at retention strategies. Health care, retirement savings and leave benefits were the top benefits used to retain employees at all levels of an organization. For highly skilled workers, health care again topped the list, but this time it was followed by leave benefits and flexible work arrangements. Will a more competitive market for highly skilled talent lead organizations to further reconsider how they use employee benefits? Or will they decide to focus primarily on compensation, salaries and bonuses—which have also been found to be critical incentives for workers—to attract and keep this critical group of employees? Indeed, the latest SHRM Employee Job Satisfaction and Engagement survey report shows that compensation is the most important factor in determining people’s job satisfaction. So it stands to reason that companies might shift their focus in that direction—and employees in the most difficult-to-fill roles will be in the best position to negotiate for what they want. Whichever way employers decide to go, the lesson to HR is the same: Your employees and prospective employees have lots of options these days—so make sure you give them a good reason to choose you.

#### Best metrics prove tech bubble.

Jeff Bercovici, 15. San Francisco bureau chief of Inc. "Yes, It's a Tech Bubble. Here's What You Need to Know". INC. September 2015. https://www.inc.com/magazine/201509/jeff-bercovici/are-we-in-a-tech-bubble.html

Are we in a tech bubble? Not so long ago, that was a question for Wall Street analysts and venture capitalists to debate among themselves, being of little interest to anyone else. But that was before recent investors [valued Uber at $50 billion](https://www.inc.com/business-insider/uber-now-worth-50-billion.html) and [Airbnb at $25 billion](http://money.cnn.com/2015/06/27/technology/airbnb-funding-valuation-update/). It was before mutual and pension funds became leading players in colossal late-stage funding rounds, linking the retirement accounts of middle-class Americans to the fates of hot but unpredictable startups at a rate not seen since the dot-com crash of 2000. It was before the collective work force of on-demand services like Uber, Lyft, TaskRabbit, and Instacart numbered in the hundreds of thousands. It was before Federal Reserve chairwoman Janet Yellen broke the customary sphinxlike silence of her office to observe that valuations in some tech categories have become "substantially stretched," before the tech sector eclipsed financial services as the leading destination for elite business school graduates, and before tech money made over large swaths of New York City, Los Angeles, Seattle, and Austin, and, of course, the entire San Francisco Bay Area, where one in five working adults is employed by a tech firm. Whatever your opinion on the bubble question, you can't ignore it. So are we in a bubble? Yup. "I define a bubble as something where assets have prices that cannot be justified with any reasonable assumption," says Jay Ritter, a professor of finance at the University of Florida's Warrington College of Business Administration who studies valuation and [IPOs](https://www.inc.com/frank-sorrentino/financials-of-going-public.html). While definitions of reasonable assumption vary, historically bubbles have occurred when, in an economic sector's development, the last money in is highly unlikely to realize a return that justifies the risk it has taken. How do you know when that moment has arrived? It's when those [billion-dollar unicorns](https://www.inc.com/tess-townsend/unicorns-breeding-like-rabbits.html), as they're known among venture capitalists, begin to insist that their ultrahigh growth rates should not be subjected to conventional P/E-based valuation analysis. (Not that they could be, anyway, since their earnings are almost always a closely guarded secret.) When their valuations are scrutinized, the results can only be called bubbly. The research firm CB Insights calculated recently that Uber was being valued by its latest investors at a multiple of 100 times its sales. To put that into perspective, Zipcar, the hot sharing-economy startup of its day, commanded around a 6x multiple at its peak. Microsoft fetched a similar one when it went public in 1986, achieving a market cap of $778 million on its first day out. Today's pace­setting enterprise software firm, Slack, is valued at more than 90x sales. Airbnb's $25 billion valuation works out to a 28x multiple; most other big hospitality providers are in the 1-to-2x range. And since it has barely started selling ads, you could argue that Snapchat, at $15 billion, is even more richly priced. Facebook hit that valuation milestone only after it had been selling ads for three years and had hit $153 million in sales. In all of these cases, investors will say it's foolish to set a ceiling on how big these young companies might become, as though a brief curriculum vitae were grounds for exuberance, not caution. "Private valuations have become disconnected from public reality," says Jules Maltz, a general partner at Institutional Venture Partners. In a recent letter to his firm's limited partners, First Round Capital's Josh Kopelman suggested that the "extreme end of a cycle" is fast approaching. Bill Gurley, a partner at Benchmark Capital and a member of Uber's board of directors, has urged caution for the past year, believing late-stage investors have "essentially abandoned traditional risk analysis" and are pouring money into companies with unsustainable burn rates. So the question isn't if, but when, this bubble will pop. If, as seems likely, it happens when interest rates rise and investors chase higher returns, how bad will it be? Some say not so bad. The aggregate funding of technology firms is well below what it was in 2000, when a Nasdaq collapse kicked off a broad, long recession. Back then, the risk was concentrated in the public markets, which included millions of relatively novice investors in mutual funds or newly opened online brokerage accounts.

#### Antitrust enforcement way up now

Jon **Swartz 12/27**/21. Senior reporter for MarketWatch in San Francisco, covering many of the biggest players in tech, including Netflix, Facebook and Google. Jon has covered technology for more than 20 years, and previously worked for Barron's and USA Today. “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>

Agencies are more **aggressively scrutinizing** tech-related deals, antitrust attorney Valarie Williams told MarketWatch. Whether investigations block mergers, they “can be disruptive and stop mergers if not discourage them,” she said.

“Legislation or not, that will not affect at all **DoJ and FTC in antitrust enforcement based on existing law**,” Williams said. “**The pendulum has definitely swung after years of inactivity** and readily-approved mergers.”

At the very least, expect acquisitions to take longer to complete, if they can get through the regulatory process at all. And **expect more scrutiny**over smaller deals after an FTC study in September revealed that Amazon, Apple, Google, Meta and Microsoft made 616 acquisitions from 2010 to 2019 that fell below the FTC’s $92 million reporting threshold but were worth at least $1 million.

#### Big tech – FTC, DOJ, Congress, states, and EU

Margaret Harding **Mcgill**, **8-30**-21. Axios. "Fall antitrust forecast: Biden raises hammer on Big Tech". Axios. 8-30-2021. <https://www.axios.com/antitrust-big-tech-apple-google-amazon-facebook-2e619cf6-2fd9-48be-bc72-0e36cb7fdcfb.html>

The antitrust scrutiny of tech giants that began during the Trump era will only intensify this fall as Big Tech critics Lina Khan, Tim Wu and Jonathan Kanter take the lead on competition policy and enforcement in the Biden administration. Why it matters: Facebook, Google, Amazon and Apple face threats from federal regulators, Congress, state attorneys general and European Union authorities. The big picture: That's four companies each being challenged from four directions: No wonder the antitrust arena can feel like three-dimensional chess. As the fall season looms, here's what the game board looks like: Facebook The Federal Trade Commission, now led by Khan, [renewed its legal effort](https://www.axios.com/ftc-accuses-facebook-of-buy-or-bury-scheme-in-new-antitrust-complaint-465b1a63-6d78-444d-9863-d34249604f48.html)challenging Facebook's acquisitions of Instagram and WhatsApp in August. The FTC accuses Facebook of buying rivals or using anticompetitive tactics to stymie them in order to squelch competition. What to watch: Facebook has until Oct. 4 to respond. The European Commission launched [an antitrust investigation](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848) of Facebook Marketplace in June over concerns that Facebook's collection of data from advertisers gives it an unfair advantage. What to watch: The United Kingdom announced a similar investigation in June that also focuses on Facebook's online dating service. In Congress, the House Judiciary Committee [narrowly approved](https://www.axios.com/house-committee-tech-competition-bills-pass-34dbc5fc-3075-4a89-beb6-2f59f6ea4915.html) a slate of tech antitrust bills, including one that would force more interoperability and another that would bar big companies from snapping up rivals through acquisitions. What to watch: Bipartisan companion legislation in the Senate would give these bills some momentum. Sen. Tom Cotton (R-Ark.) said in July he intends to introduce a bill that would curb mergers among big tech companies. Amazon The FTC has been investigating Amazon's business practices since the Trump administration and [is also digging](https://www.wsj.com/articles/amazons-planned-purchase-of-mgm-to-be-reviewed-by-ftc-11624379614) into the e-commerce giant's plan to buy Hollywood studio MGM. What to watch: Amazon wants Khan [to recuse herself](https://www.axios.com/amazon-ftc-chief-recusal-antitrust-ecb53fe6-8cc9-476f-813c-00b7b1346cfb.html)from FTC's Amazon cases, given her previous advocacy of action against the company. The European Commission accused Amazon last November of [violating antitrust rules](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077) by harnessing data it collects from third-party sellers to shape the products it offers that compete with those merchants. What to watch: The commission also opened a separate investigation into how Amazon selects which products get the coveted "Buy Box" label. But a Financial Times story in March suggested that case has been an [uphill climb](https://www.ft.com/content/d5bb5ebb-87ef-4968-8ff5-76b3a215eefc). In Congress, Amazon faces the potential for drastic changes to its business model through the House antitrust bills that would bar it from both operating its online marketplaces and selling goods on them. What to watch: Amazon is [warning sellers](https://www.cnbc.com/2021/08/20/amazon-launches-website-to-warn-sellers-about-antitrust-bills.html) that they could bear the brunt of the cost if such legislation is enacted — and hoping those sellers will call their representatives. Google The Justice Department and several state attorneys general filed multiple antitrust lawsuits against Google last year, with the DOJ [accusing Google](https://www.axios.com/justice-department-sues-google-over-alleged-search-monopoly-e885ac43-b7a6-4dac-afe3-b5ca8402c833.html) of an illegal monopoly in online search and search advertising. What to watch: The judge in DOJ's case indicated it likely won't go to trial until 2023. President Joe Biden nominated Jonathan Kanter, an antitrust attorney who has battled Google on behalf of its tech foes, to lead the antitrust division of the DOJ, though he has not yet been confirmed by the Senate. In Congress, Google faces multiple legislative threats, from the House antitrust bills as well as legislation in both the House and the Senate that would [curb its power](https://www.axios.com/app-stores-bipartisan-senate-bill-google-apple-081c9949-ba90-4996-ad9f-fecc16029f9e.html)over its Google Play Store. What to watch: State attorneys general [also sued](https://www.axios.com/google-state-antitrust-lawsuit-b20ff43c-e0d5-4b5a-b064-5b091519d7cf.html) Google over how it operates its app store. The European Commission opened its [own investigation](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143) in June into Google's power in the online advertising ecosystem. What to watch: Previous European antitrust investigations into Google have led to billions of dollars in fines. Apple In Congress, Apple is facing proposed laws in both House and Senate that would limit its control over how it runs its App Store. What to watch: Apple recently offered [some concessions](https://www.axios.com/apple-settles-developer-class-action-c13bb308-daf3-4231-a399-ffd48b6b2c52.html) on its App Store policies to settle a class-action lawsuit — but not enough to satisfy those who back these bills. The European Commission, acting on a complaint by Spotify, accused Apple in April of [violating antitrust laws](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061) by requiring rival music streamers to use its in-app payment system and follow other rules. What to watch: The commission opened [a separate investigation](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073) in June to more broadly review Apple's rules for app developers. The Justice Department is [reportedly also investigating](https://www.politico.com/news/2020/06/24/justice-department-anti-trust-apple-337120) Apple for anticompetitive practices, although that probe has led to no charges so far.

#### tech labor market is competitive---they won’t be pursued---they have no ev specific to the plan---here’s the ev they want

Brittany **Meiling, 7-31-**21**.** San Diego Union-Tribune. "Employers bow to tech workers in hottest job market since the dot-com era". Los Angeles Times. 7-31-2021. <https://www.latimes.com/business/story/2021-07-31/employers-bow-down-to-tech-workers-in-hottest-job-market>

There’s an air of desperation among tech employers this summer. Software talent, it seems, is in such high demand that companies are morphing how they hire. And workers are the ones with the power. Good and experienced tech workers are being treated like celebrities — hounded by recruiters, courted by managers, and bestowed a bevy of options before choosing their next boss. “It makes you feel like you’re amazing, when really ... you’re just another software engineer that’s looking for a job,” said Henry Chesnutt, who just moved back to San Diego from San Francisco to work at the rapidly growing tech startup Flock Freight. The job outlook for workers like Chesnutt has been good for much of the last decade. But now, a multitude of factors are driving competition for talent to a level not seen in nearly 20 years, some recruiters say. “This is the most competitive market I can remember in my professional career, with many people comparing it to the dot-com market of the late ‘90s,” said Jim Bartolomea, vice president of global talent at tech titan ServiceNow, which employs a huge chunk of the software talent in San Diego. Last month, employers posted more than 365,000 job openings for IT workers, the highest monthly total since September 2019, according to IT trade group CompTIA. The positions highest in demand include software developers, IT support specialists, systems engineers and architects. [There’s no labor shortage — just not enough good jobs](https://www.latimes.com/business/story/2021-07-02/labor-shortage-is-workers-crisis-as-covid-economy-recovers) Employers in California and the U.S. are scrambling to fill jobs as the dust from the pandemic begins to settle. Just don’t call it a labor shortage. The demand has been attributed to all sorts of things. During the pandemic, businesses that had been slow to adopt enterprise software began rapidly catching up. A tidal wave of productivity software, conferencing and collaboration tools, and e-commerce tech flooded the world. The same was true for consumer tech, with video game development, entertainment tech and social platforms booming. Many of these jobs are going unfilled, as competition for new hires ramps up. Simultaneously, remote work became the status quo in the tech industry. Suddenly, software talent could pick and choose from a massive pool of job opportunities. All while existing talent is beginning to stray. Roughly a third of more than 2,800 IT professionals said they plan to look for a new job in the next few months, according to a recent Robert Half International survey. Aaron Bartholomew, a lead backend developer at tech company Trust & Will, just went through a two-month job search in which he held the power in the employer-worker exchange. “I realized pretty quick that I was the one with the upper hand,” Bartholomew said. “All these companies were moving incredibly fast to try and close on me.” Software interviews have a reputation for being slow, painful processes that involve tests of logic, design and computer science knowledge. Years ago, Chesnutt was tested for five straight hours on algorithms during an interview with YouTube. But now, these technical interviews are often being waived, said Chesnutt and Bartholomew, who both experienced this step dropped for the sake of urgency. Recruiters are increasingly using what Chesnutt sees as pressure tactics, such as “exploding offers,” which are job offers that self-detonate at a set date and time if engineers don’t accept them soon enough. “They’ll try to rush you through the process as soon as possible, and get you to sign that day while they’re on the phone with you,” Chesnutt said. Brett Wayne, a tech recruiter and managing director at Cypress, said the competitive pressure is unlike anything he’s seen in his 13-year career in recruiting. He likened it to what’s happening in the real estate market. Just like a hot property with multiple bids, Chesnutt ended his job hunt with four employment offers. To win a bid on a quality engineer, companies are offering things such as flexible hours, sign-on bonuses and permanent remote work, the last of which has become a requirement for much of the workforce. Dice, a website and staffing firm that focuses on tech talent, published [a report in June](https://www.dice.com/media/dice-press-releases/6-15-21-dice-report-shows-technologists-desire-flexible-structure-over-full-time-remote-work.html) that found only 17% of technologists wanted to work in an office full time, while 59% wanted remote and hybrid approaches. [‘Work from anywhere’ is here to stay. How will it change our workplaces?](https://www.latimes.com/business/technology/story/2020-11-12/companies-will-allow-employees-to-work-wherever-they-want) Working from home will become the norm for many employees even after the pandemic ends. But prepare for a pay cut. Wayne said he’s observed companies shoot themselves in the foot by not offering remote options, making an already slim candidate pool even slimmer. “If it was hard to hire talent 18 months ago — and now you cut the group you’re going for in half — it’s going to be really tough for you,” Wayne said. Bartholomew said he’s watched a great migration of developers out of urban areas, riding remote work out of San Diego or other cities. “Literally about 50% of my peer group has moved,” Bartholomew said. “Companies that adapt will get the majority of the talent pool.” It’s not strict remote work, however, that seems to be appealing to the majority of engineers, according to the Dice report. It’s more about flexibility to choose. “While many technologists would still prefer to work 100% remotely, there is an equal desire for a hybrid approach, and we’ve actually seen fewer remote days per week become more desirable over the past year,” Art Zeile, CEO chief executive of Dice, said in a statement. “The companies who succeed in attracting and retaining top talent will be those who take the time to build an agile approach that gives technologists flexibility and control over their work environment.” U.S. tech salaries are also on the rise. A recent [Dice report](https://techhub.dice.com/Dice-2021-Tech-Salary-Report.html) found tech jobs saw an average salary increase of 3.6% between late 2019 and late 2020. That might not sound like much, but it’s a significant jump compared with 2017, 2018 and 2019, when annual increases were less than 1%. U.S. employers across all industries — not just tech — reported their strongest hiring outlook since 2000, according to an [employment outlook survey](https://www2.staffingindustry.com/site/Editorial/Daily-News/US-hiring-plans-in-Q3-highest-since-2000-ManpowerGroup-57966) published by staffing giant ManpowerGroup in June. “It’s a worker’s market, and employees are acting like consumers in how they are consuming work — seeking flexibility, competitive pay and fast decisions,” Becky Frankiewicz, ManpowerGroup president for North America, said in a statement. “Now is the time for employers to get creative to attract talent — and to hold onto the workers they have with both hands.”