# Harvard r6 aff disclosure

## 1ac

### 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.

#### 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.

### Modeling---1AC

#### Advantage 2 is Modeling---

#### Competition standards around the world focus on consumer welfare.

Ganesh **Sitaraman 18**. the Co-founder and Director of Policy for the Great Democracy Initiative. He is also a professor of law at Vanderbilt University. Sitaraman served as policy director to Senator Elizabeth Warren during her Senate campaign, and then as her senior counsel in the U.S. Senate. “Taking Antitrust Away from the Courts: A Structural Approach to Reversing the Second Age of Monopoly Power”. https://ir.vanderbilt.edu/xmlui/bitstream/handle/1803/9447/Taking%20Antitrust%20Away%20from%20the%20Courts.pdf?sequence=1&isAllowed=y

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

#### The Philippines mirrors the US consumer welfare standard.

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

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

#### Antitrust is key to combat weakened growth and rising income inequality

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

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

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

Kenneth Yeo Yaoren et al 21. Kenneth Yeo Yaoren is a Research Analyst with the International Centre for Political Violence and Terrorism Research (ICPVTR) of the S. Rajaratnam School of International Studies at the Nanyang Technological University. Rueben Ananthan Santhana Dass is a Research Analyst with ICPVTR. Jasminder Singh is a Senior Analyst with ICPVTR. “Maritime Malice in Malaysia, Indonesia and the Philippines: The Asymmetric Maritime Threat at the Tri-Border Area”. International Centre for Counter-Terrorism – The Hague. April 2021. https://icct.nl/app/uploads/2021/04/maritime-terrorism-southeast-asia-policy-brief.pdf

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

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

Abhijit Singh 18. A former naval officer, Senior Fellow, heads the Maritime Policy Initiative at ORF. A maritime professional with specialist and command experience in front-line Indian naval ships, he has been involved the writing of India's maritime strategy (2007). “Maritime terrorism in Asia: An assessment” https://www.orfonline.org/research/maritime-terrorism-in-asia-an-assessment-56581/

The terrorism-piracy nexus and port security In assessing the nature of maritime terrorist activity in Asia, it is important to study the terrorism-piracy nexus – not least because pirates have in the past financed terrorist activity.[59]Evidence of a linkage between the terrorists and pirates first emerged in May 2003, when the M/V Pen rider, a Malaysian-registered oil tanker, was attacked off the coast of Malaysia, and three crew members were taken hostage.[60] After ship owners paid $100,000 to free the crew, it emerged that the attackers were associated with the Free Aceh Movement, an insurgent group operating in Indonesia. The receipt of a ransom of $1.2 million by the Somali pirates to free a Spanish fishing vessel and 26 hostages in 2008 provided more proof of a possible link between terrorists and pirates; reportedly, the Al-Shabaab had received a five-percent cut. A year later, when the terror group hired pirates to smuggle in members of Al Qaeda to Somalia, the terror-piracy linkage seemed virtually certain.[61] In recent years, terrorists and pirates have appeared to draw closer, even if the exact nature of their collaboration is not clear. Somali pirates and terrorists are said to have worked together in arms trafficking, and Al-Shabaab is said to have even have trained pirates for ‘duties’ at sea.[62]An investigation by the United Nations (UN) in 2017 found evidence of collusion between pirates and the Al Shabaab, including the possibility that pirates helped the latter smuggle weapons and ammunition into Somalia.[63] As discussed earlier, in Southeast Asia, the Abu Sayaff’s turn to piracy has resulted in millions earned via ransom payments.[64] Its cadres have used the revenue earned for pirate activity to expand the radical organisation’s presence in Southeast Asia. The terror-piracy linkage is important because it highlights the causal mechanism behind rising violence at sea. The task of maritime security agencies becomes harder, however, when the lines between terrorism and piracy begin blurring, particularly in Southeast Asia, where the Abu Sayyaf has alternated between piracy and terrorism. Today’s pirates are trained fighters onboard speedboats, armed not only with automatic weapons, hand-held missiles and grenades but also and global positioning systems; professional mercenaries that loop effortlessly between rent-seeking and violent acts. Their objectives are as much ideological, as they are material. ISPS code and littoral security While most discussions around maritime terrorism presume a threat to sea-borne assets, port security constitutes the bigger challenge. Terrorists have long had seaports on their crosshairs, because of the latter’s role in trade and economic development. In recent years, there has been a significant increase in freight traffic, with key ports in Asia transformed into global trading hubs. In keeping with the growing importance of port-enabled trade, regional governments have taken better measures to protect ships and onshore facilities. In many ports, authorities have increased guards, gates, and security cameras, even introducing identification card programs to screen those with access to critical port infrastructure. The installation of radiation detectors has been particularly helpful in screening critical cargo and identifying suspicious shipments. Yet, not even the best ports in Asia are able to track and monitor large containers comprehensively. With a rising quantum of cargo to be handled every day, port authorities find it impractical to scan each and every container being offloaded from cargo ships.[65]Container scanning in many ports is in fact a largely random exercise, with authorities insisting that shippers provide manifests of what is contained in cargo bins.[66] The lack of effective checks on ports brings up the possibility of the use of containers as weapons to smuggle in arms, explosive materials or the terrorists themselves. While terrorists would not possibly target cargo ships directly, the latter could be used to transport weapons or to sabotage commercial operations. A dirty-bomb in an illicit cargo container of a cargo ship could cause a port shutdown and huge commercial disruption.[67] Even a failed attempt to smuggle a device into a major transshipment hub would significantly impact port operations. After the 9/11 incident in the United States, the International Maritime Organization (IMO) had established the International Ship and Port Facility Security (ISPS) Code—a set of maritime regulations designed to help detect and deter threats to international shipping. The code subjects ships to a system of survey, verification, certification and control to ensure that the security measures prescribed by the IMO are implemented by member countries. It also provides a standardised, consistent framework for evaluating risk and gauging vulnerabilities of ships and ports facilities, laying down principles and guidelines for governments, port authorities and shipping companies, making compliance mandatory.[68] The code, however, has not been effective in a way originally intended.[69]Firstly, the code is based on the experience of 9/11 and early piracy activity off Somalia. No amendments or revisions have been made with regard to new types of security threats encountered in recent years. The exclusion of vessels less than 500 tonnes, and all fishing vessels regardless of their size, is a further impediment in the code’s implementation, as terrorists have sought to use smaller boats to smuggle weapons and ammunition rarely subject to regulation.[70] Another shortcoming is that the code does not include official monitoring procedures for security matters. Unlike the International Safety Management Code (ISM) that prescribes office audits by internal and external sources, the ISPS enumerates general guidelines and precautions—a standardised template for evaluating risks on many different types, sizes and categories of vessels and facilities.[71] The code also does not specify ways to strengthen capability to protect against new forms of terrorism, such as drone attacks.[72] With no legal obligation to implement regulations, port authorities are unwilling to make necessary investments in security measures. The lack of national legislation/guidelines is another hurdle in the code’s implementation. Regional governments have neither enacted necessary domestic legislation to fight terrorists nor allotted resources to implement security measures.[73] In India, for instance, there is no comprehensive maritime security policy for protection of the commercial maritime infrastructure and supply chains.[74]A new Merchant Shipping Bill[75] in 2016 improved transparency and effective delivery of services, but has failed to address security concerns. Given the complicated mix of variables contributing to port security, a study of security measures adopted by the civil aviation industry might offer some useful pointers. The latter’s efforts to prevent hijackings of commercial aircraft over the past four decades has been widely hailed as a success. Developed in the late 1960s, the international legal regime governing civilian flight operations was significantly upgraded after the attacks of 11 September 2001. The United States’ efforts to bring in legislation to regulate foreign airlines and flights from foreign airports have been particularly helpful. In concert with other international conventions drafted by the UN International Civil Aviation Organization (ICAO), the regulatory regime has deterred terrorists and criminals from targeting aircraft.[76] This may hold important lessons for port security; in particular, approaches used in the international legal regime governing civil aviation to eliminate safe havens for pirates and terrorists by ensuring legal accountability. A study of security in the aviation sector could offer important tips on how port security systems could be mobilised to encourage best management practices; the importance of freezing assets of those who fund piracy enterprises; and the utility of enhancing communication and coordination among the various stakeholders relevant to the fight against piracy and terrorism.[77] A next terrorist attack: Gauging the odds To design policies that help combat maritime terrorism it is important to assess the likely nature of future attacks and their probable targets. Future terrorist attacks could be directed against four kinds of targets: warships, supertankers, passenger ships and port facilities. The most vulnerable and attractive targets remain tankers out at sea. The recent attacks on tankers in the Persian Gulf revealed that the threat is evolving and could now include unmanned vehicles.[78] More damaging would be the seizure and sinking of an oil-carrying tanker in a congested space, crippling the flow of maritime traffic. To get a sense of the extent of damage such an attack would cause, the Limburg incident in 2002 caused a massive spillage of oil (almost 90,000 tonnes) that took many weeks to clear.[79] Another kind of attack could be on cruise ships out at sea. Big cruise ships are a lucrative target since they are lightly defended and relatively easily accessible.[80]An enquiry into the Achille Lauro incident in October 1984 highlighted fundamental deficiencies in safety procedures. Apparently, checks on passengers in the run-up to that fateful incident had not been foolproof. Despite acting nervously and even displaying anti-social behaviour, the Palestinian hijackers did not arouse the suspicions of passengers and crew.[81] While safety procedures have since improved, security procedures at ports and aboard cruise ships (with certain exceptions) are far from immaculate. During the Super Ferry incident in the Philippines in 2004, Abu Sayyaf operatives disguised as tourists smuggled 20 sticks of explosives that were stored inside an emptied out TV set.[82] There is some evidence that cruise shipping companies in Asia and Africa continue with the same lax approach that enabled that devastating attack. The most likely venue of a future terrorist strike, however, might be inside a port facility, and it could possibly involve a ‘lone wolf’ with a loose affiliation to a bigger terrorist group. Ports are an attractive target because many of the tactical problems that terrorists face in orchestrating attacks on ships in the high seas do not apply to harbors, ports, or shore-based maritime facilities. Terrorists realise that the containerised supply chain is complex, and creates many opportunities for isolated acts of terrorism. An ineffective point of check, for instance, could allow a jihadi inside a container to detonate a vast quantity of explosives or a low-grade nuclear device; inadequate surveillance in a vessel could lead a jihadi diver to plant an explosives improvised explosive device (IED). While many ports have installed radiation detectors to combat the threat of IED, the pace of installation has been slow, and smaller ports remain vulnerable.

#### Extinction.

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

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

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

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

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

### FTC---1AC

#### Advantage 3 is the FTC---

#### FTC promised labor protection now---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 prohibit private sector business practices that violate an antitrust worker welfare standard.

### Solvency---1AC

#### Contention 4 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.

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.

#### 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

## 2ac

### Inequality adv---2ac

#### 1---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.

#### 3---Consumer welfare hurts consumers.

Sandeep Vaheesan 19. Legal Director, Open Markets Institute. “Accommodating Capital and Policing Labor: Antitrust in the Two Gilded Ages” Maryland Law Review. Volume 78, Issue 4. 2019. https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3832&context=mlr

Consumer welfare antitrust **failed even on** **consumer welfare grounds**. In metropolitan areas across the country, hospital mergers created **highly concentrated markets for hospital services** and contributed to **higher costs in health care**.416 John Kwoka has shown that the antitrust agencies often failed to challenge mergers that had subsequent anticompetitive effects (higher short-term consumer prices).417 Furthermore, Kwoka found that merger rem- edies, especially behavioral remedies, often **failed** to preserve competition.418 Other research has also shown that increased market concentration contributes to **higher consumer prices.**419 The failures of consumer welfare antitrust become even clearer when a broader set of economic and political interests are examined. Higher consumer prices are one manifestation of business power but only one and **arguably not the most important one**. Concentration in labor and product markets contributes to **lower wages**.420 Just from a consumer angle, dominant online platforms, with their huge troves of user data and lack of effective competition, pose serious threats to **personal privacy**.421 Companies that control infrastructure that support a range of activity, whether they are the electric grid or a search engine monopoly, have the power to shape large swaths of the economy over time.422

#### 4--- Labor monopsony turns---reduces employment by 13% and labor’s share of national output by 22%---wages boost growth---increases spending, tax profits, lowers welfare, causes education and productivity---that’s posner and stiglitz and…

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.

#### 6---Worker suppression hurts growth and innovation.

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

The economic consequences of labor market power are analogous to those of product market power. Product market power has two wellknown effects. It redistributes from consumers to the firm: consumers must pay more for products, and the firm earns greater profits at their expense. And it creates waste or deadweight loss. Some consumers would be willing to pay the efficient, marginal cost price that the firm would have charged in a competitive market but are not willing to pay the higher price the monopolist chooses to charge. Similarly, monopsony power has two effects. It redistributes from workers to employers by lowering wages. And it creates waste: some workers would have been willing to work for the employer if they had been paid their full marginal revenue product but will quit if they are paid the marked-down wage the monopsonist offers. This leads to increased unemployment or nonemployment as workers find prevailing wages unacceptable and exit the labor force or refuse to take available jobs. Economic output also declines. Monopsony power creates other negative effects as well. First, to the extent that the degree of monopsony power differs across employers, it will also lead to misemployment: workers may be more productive at employer A, which has a lot of labor market power, than at employer B, which has a little. But B may offer higher wages because of its limited labor market power. The worker may thus choose to work at B, lowering the productivity of the economy. Misallocation may be particularly severe because of the two-sided matching problem. If matches between workers and firms generate specific benefits, monopsony can distort which firms match which workers, which will lower the allocative efficiency of the market. Second, employers will often cut benefits, rather than cut wages, to take advantage of workers who are locked into the job. The firm has no need to retain these workers and thus may wastefully degrade conditions of work these “stuck” workers particularly value, instead catering only to the workers the firm is worried about losing.26 Third, monopsony raises prices for consumers. This may seem counterintuitive: won’t lower wages to workers be passed through to consumers as reduced prices? That argument is often made as a defense of monopsony power. In fact, however, this argument is wrong. To see this, note that if firms employ fewer workers, they will produce less output, resulting in higher prices. The labor cost savings accrue to the employer itself (or its shareholders), not to the buyers of its goods. Those buyers will pay a price that is determined by the structure of the product market, not the labor market. So, for example, if the employer is also a monopolist in the product market, it will charge the buyers the monopoly price—which is determined by how much buyers are willing to pay. And if the product market is competitive, the employer will charge prices for its goods that are no higher than the competitive price—with its competitors taking up the slack as the employer itself will produce less given its small workforce. The technical explanation is that while the firm lowers wages to workers, the cost to the firm of hiring workers rises as the firm now considers the fact that, when it hires an additional worker, it also will pay its other workers more. When a monopsonist hires a single worker, it must increase wages for all its workers. (Recall that employers cannot easily wage-discriminate.)27 If this seems paradoxical, note that it is merely the flip side of a well-understood feature of monopolistic control of product markets: that a monopolist produces fewer products and charges a higher price for them than does a competitive firm. Monopoly and monopsony are two sides of the same coin, and both harm labor and product markets. Fourth, and precisely for this reason, monopsony power reinforces and exacerbates monopoly power. In fact, both can be seen as two alternative ways for the owners of capital to squeeze workers and thus reduce the returns to productive work and the output of the economy. The markdown on wages caused by monopsony and the markup on prices caused by monopoly are akin to taxes: payments that ordinary people must pay in order to go about their daily life as producers and consumers. However, the payments go not to governments to fund programs, but to firms and, ultimately, investors. And the payments do not spur investment and raise economic growth because they depend in the first place on the willingness of managers to leave capital idle to obtain market power, while driving workers out of the workforce and onto taxpayer-financed relief programs.

### Welfare pic---2ac

#### 3---We need a new language---wrecks deterrence and certainty.

Sandeep Vaheesan 18. Policy Counsel, Open Markets Institute. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century” https://www.ftc.gov/system/files/documents/public\_events/1408208/ftc\_hearings\_session\_2\_transcript\_9-21-18\_0.pdf

MR. VAHEESAN: So I believe calculating monopsony systematically going forward requires jettisoning consumer welfare. At a minimum, the language of consumer welfare is very hard to square with buyer side concerns. How do workers and suppliers fit under consumer welfare? They are not consumers or purchasers. They acknowledge that there may be an accepted term of art among specialists, but it is deeply confusing to a lay observer.

And since we are talking about public law advancing public ends, goals that only specialists can understand should give us real pause. And, furthermore, I feel that so long as we are in the consumer welfare framework, antitrust will continue to be used against independent contractors and others trying to organize against monopsony power. After all, workers’ collective action can lead to higher prices for consumers.

So I believe if we want to take the monopsony threat seriously, we require new language and new philosophy that antitrust is antimonopoly; a body of law that, as Congress originally intended, controls the power of big businesses over consumers, workers, competitors and suppliers.

### Small business board cp---2ac

#### Taxes causally harm growth---recent studies prove.

Alex Durante 21. Federal Tax Economist “Reviewing Recent Evidence of the Effect of Taxes on Economic Growth” Tax Foundation. 05-21-21. <https://taxfoundation.org/reviewing-recent-evidence-effect-taxes-economic-growth/>

With the Biden administration proposing a variety of new taxes, it is worth **revisiting the literature** on how taxes impact economic growth. In 2012, we published a review of the evidence, noting that most studies find negative impacts. However, many papers have been written since, some using more sophisticated empirical methods to identify a causal impact of taxes on economic growth. Below we review this **new evidence**, again confirming our original findings: **Taxes**, particularly on corporate and individual income, **harm economic growth.** The economic impacts of tax changes on economic growth, measured as a change in real GDP or the components of GDP such as consumption and investment, are difficult to measure. Some tax changes occur as a response to economic growth, and looking at a tax cut at a certain point in time could lead to the mistaken conclusion that tax cuts are bad for growth, since tax cuts are often enacted during economic downturns. For this reason, most of the literature in recent years, and reviewed below, has followed the methodology developed in Romer and Romer (2010): Looking at unanticipated changes in tax policy, which economists refer to as “exogenous shocks.” There are other methodological challenges as well. Failure to control for other factors that impact economic growth, such as government spending and monetary policy, could understate or overstate the impact of taxes on growth. Some tax changes in particular may have stronger long-run impacts relative to the short run, such as corporate tax changes, and a study with only a limited time series would miss this effect. Finally, tax reforms involve many moving parts: Certain taxes may go up, while others may drop. This can make it difficult to characterize certain reforms as net tax increases or decreases, leading to mistaken interpretations of how taxes impact growth. We **investigate papers in top economics journals** and National Bureau of Economic Research (NBER) working papers over the past few years, considering both U.S. and international evidence. This research covers a wide variety of taxes, including income, consumption, and corporate taxation. All seven papers reviewed here find that **tax cuts** have **positive effects** on growth, although some papers note that the strength of this effect depends on which taxes are cut, for whom, and when. Mertens and Olea (2018) used time series data from 1946 to 2012 to estimate the impacts of marginal tax rates on individual income. They found that marginal rate cuts led to both increases in real GDP and declines in unemployment. A 1 percentage-point decrease in the tax rate increases real GDP by 0.78 percent by the third year after the tax change. Importantly, they find that changes in income following a tax change are responsive to the marginal rate change regardless of the change in the average tax rate. This illustrates that the positive GDP changes the authors find are the response to changes in the incentives, rather than due to an increase aggregate demand through the consumption channel. Cuts in tax rates for the top 1 percent also have positive impacts on other income groups, consistent with a supply-side narrative of how reductions in top marginal rates can increase incomes for other groups over time. However, tax cuts for the top 1 percent do increase inequality. Zidar (2019) examines the impact of federal tax burdens on economic growth and labor supply across different income groups and states from 1950-2011. He finds positive impacts of tax cuts on economic growth following two years after the change in policy but finds that tax cuts for low- and moderate-income taxpayers affect growth more than tax cuts for high-income taxpayers. The paper finds that a 1 percent of state GDP tax decrease for the bottom 90 percent of earners increases state GDP by 6.6 percent. Looking at labor supply effects in particular, he finds that a 1 percent of state GDP tax decrease increases labor force participation for the bottom 90 percent of earners by 3.5 percentage points and hours worked by 2 percent. He does not find any significant impact on labor force participation rates, hours worked, or GDP growth for the top 10 percent of earners from a similarly sized tax change, somewhat in contrast to the results found in Mertens and Olea (2018) for top earners. This result may lead some to assume that Zidar is identifying “Keynesian” effects of tax changes, or aggregate demand effects. However, the paper finds strong effects of tax cuts on real wages as well. As Zidar notes, “the increase in real wages suggests that supply-side responses are important and may exceed demand-side responses to tax changes for the bottom 90%.” Additionally, some may go further and argue that this paper shows that tax cuts for top earners have no impact on growth. However, this paper only looks at short-run impacts of tax changes on GDP and does not consider the broader implication of tax policy on long-run growth, human capital, or innovation. Nonetheless, the paper **provides compelling evidence** of tax cuts impacting growth through the supply side, consistent with neoclassical economic theory. Ljungvist and Smolyansky (2018) **look at 250 state corporate tax changes** from 1970-2010 to assess their impact on employment and income. By comparing nearby counties across states, this allows the authors to isolate the impacts of corporate tax changes relative to other policies that might affect economic growth. They find that a 1 percentage-point cut in statutory corporate tax rates leads to a 0.2 percent increase in employment and a 0.3 percent increase in wages. They find that **tax increases are** almost **uniformly harmful**, while tax cuts seem to have their strongest positive impact during recessionary environments. As with some of the other studies discussed here, the paper mainly examines short-runs effects, and it is possible that these positive effects could grow over a longer time horizon.

#### federal changes key

John Cassidy 10-18. Staff writer at The New Yorker since 1995. "America’s Workers Are Fighting Back: Can They Win?." New Yorker. 10-18-2021. https://www.newyorker.com/news/our-columnists/americas-workers-are-fighting-back-can-they-win

\*Quotes Aaron Sojourner, a labor economist at the University of Minnesota who worked in the Obama White House.

There is another post-pandemic scenario, though, in which the shortage of workers gradually disappears, and the newfound activism of labor dissipates. If the number of covid-19 cases is brought permanently under control, many people who have left the labor force—such as those nearing retirement age, and parents who quit their jobs to look after children—could be drawn back. If that happened, and the imbalance between vacancies and job-takers vanished, leverage could quickly revert to the side of the employers. “I am skeptical of the idea that there is a whole new world,” Sojourner said. “I don’t think the balance of power has shifted in a fundamental and permanent way.”

Sojourner made another important point, however: the best chance of maintaining some equity and balance in the labor market is to strengthen the hand of workers. In Washington, the Fed and Congress could achieve this by using monetary and fiscal levers to support the economy and keep the jobless rate at a low level. The Biden Administration could also beef up and enforce labor laws, by, for instance, getting the Senate to enact at least some elements of the pro Act, which the House of Representatives passed in March. “Going forward, the ability of workers to organize and maintain gains hinges on these policy changes,” Sojourner said. “The reality is being defined on the ground right now.”

### Labor law cp---2ac

#### 4---Doesn’t solve deterrence---ineffective remedies, agency capture, and expertise gaps ensure failure to curtail anticompetitive practices.

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.

#### 8---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.

#### the regulation is the remedy---solves.

Alison Jones and Renato Nazzini 19. King's College London – The Dickson Poon School of Law. The Effect of Competition Law on Patent Remedies. In B. Biddle, J. L. Contreras, B. J. Love, & N. V. Siebrasse (Eds.), Patent Remedies and Complex Products: Toward a Global Consensus Cambridge University Press, Cambridge. https://kclpure.kcl.ac.uk/portal/files/102369282/The\_Effect\_of\_Competition\_Law\_on\_Patent\_Remedies.pdf

Remedies available for violations of antitrust and competition law broadly include monetary, behavioral, or injunctive remedies.141 When actions are brought by enforcement agencies, monetary remedies typically take the form of penalties and fines intended to deter the particular harm in question and to punish the liable party. In private actions, monetary damages are typically compensatory, though in some jurisdictions, particularly in the U.S., enhanced monetary awards (treble damages and attorneys’ fees, this latter element as an exception to the general rule of non-recoverability of legal costs in that jurisdiction) may be available.142 In addition to compensatory damages, both private parties and enforcement agencies may seek behavioral remedies that are intended to deter, halt, and correct violations.143 Injunctive relief in antitrust cases generally seeks to remedy a harm caused by anticompetitive conduct and to prevent its recurrence. Thus, in the case of price fixing between competitors, remedial measures may simply prohibit further price fixing. In monopolization or dominance cases, a remedial order may prohibit a dominant firm from carrying on a particular business within certain markets or, exceptionally, require a firm to divest certain business units or subsidiaries. The range of remedies in antitrust cases is thus quite broad, including cease and desist orders (for example, prohibiting the seeking of an injunction or the charging of exploitative royalties), affirmative obligations (for example, an obligation to license or to license on competition compliant terms), structural remedies (such as structural separation of business units), and other sanctions. Such remedies may impact, or override, rights and remedies conferred by patent law by, for example, preventing a patent owner from seeking an injunction (through a cease and desist order), ordering a compulsory licence, nullifying the sale of patent rights, or interfering with licensing arrangements or terms. They may also subsequently require close scrutiny or monitoring for compliance. In general, the scope of antitrust injunctive relief sought by enforcement agencies can be as broad as necessary “to bring about the dissolution or suppression of” the illegal conduct.144 As such, these remedies, which must account for effects on the public and the marketplace, are considered to be more sweeping forms of relief than injunctive relief between private litigants.145 A decision-maker might be reluctant to intervene to prohibit certain conduct under competition law—for example, a refusal to license or the seeking of an injunction by a patentee—if it believes that a simple cease and desist order, prohibiting the unlawful conduct identified, and its recurrence, would be insufficient to ensure that the infringement is brought to an end. If an effective remedy requires more, the court or agency must undertake both a careful consideration of the appropriate terms of dealing (especially pricing) as well as the realistic prospects for monitoring of that behavior in the future. In the U.S., for example, the Supreme Court has on some occasions expressed reluctance to find that a refusal to deal or a margin squeeze constitutes a substantive antitrust violation in circumstances where such a violation would require the courts to act as central planners, involved in the construction of “fair” access terms or the setting of “fair” prices or spreads between prices, a task to which the Supreme Court felt the courts were ill-suited.146 In the EU, the difficulty of ensuring the effectiveness of the antitrust intervention has also proved to be real. In the Microsoft case,147 for example, the Commission and Microsoft, following the Commission’s initial fining of Microsoft for its failure to supply interoperability information, wrangled for several years over the appropriate terms for supplying the interoperability information; eventually the Commission fined Microsoft a second time for its failure to comply.148

#### labor law is subordinate.

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.

### Multilat cp---2ac

#### 3---say no---won’t take sovereignty losses.

Bruno Bastos Becker 16. Associate of the Competition Practice at Barbosa, Müssnich & Aragão Advogados. Revista Do Ibrac Volume 22 - Número 1- 2016 Prêmio Ibrac - Tim 2015 “Decentralized Globalization: Possible Solutions for Multiple Merger Control Regimes in Cross-Border Transactions”. https://d1wqtxts1xzle7.cloudfront.net/52329387/SSRN-id2926207.pdf?1490635488=&response-content-disposition=inline%3B+filename%3DDecentralized\_Globalization\_Possible\_Sol.pdf&Expires=1633221921&Signature=AdZzigmFmDWzAJDsFfwmed9N0wgp7JMqh1Z7XUAIxb2ocUtkMJLFCwRj4NslBFsxzWeYwJ~gkHQm0Zb22NuvJwQzbnHnUMGlXzDXdujTXsxQFyE4fSapKDT9lbk2uWrYgrCBMfw0sli1tKJPOQsVlVyeKiSWoFIfkj5M9wQaGyLoucnRYm~66PajYX~ureUvwk~kMFcr4wNpXWCO~reag8ObhcgUhRDwNB34iNJF4Z08o4VGIOwP4CqvSs1VV3gIY4-rLKazwWkwkWHj1hK11yy3~HRWtDevXLzli8qGpvvc7Z8KKEA~nj-6HTtMX7Ps9nHZZJZVQW-lNK4fXHrCow\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

Over the last decade, several scholars have proposed different solutions for the problem of the decentralized globalization. However, none of the efforts resulted in a cohesive merger control system41. One of the main reasons is that merger policy is strongly related to industrial policy and, therefore, countries have rejected the possible loss of sovereignty42

---FOOTNOTE 42 STARTS, MIDPARAGRAPH---

42 “Because merger policy is usually closely linked to industrial policy, nowadays most countries are not ready to relinquish part of their sovereign rights in this area in order to support some sort of international merger policy, negotiated and implemented at a multilateral level. Therefore, absolutely no agreement on substantive rules to tackle mergers, not even in the form of «rule of reason» guidelines, seems to be foreseeable at international level in the near future”. (MONTINI, Massimiliano. Globalization and International Antitrust Cooperation. International Conference Trade and Competition in the WTO and Beyond. 1999. p. 18 Available at: http://www.feem.it/userfiles/attach/Publication/NDL1999/NDL1999-069.pdf)

---FOOTNOTE 42 ENDS, PARAGRAPH CONTINUES---

that is part of the main proposals so far. Furthermore, as pointed out by Jörg Terhechte, there are many differences between authorities that must be taken into account for the designing of a possible solution, like financial and personal resources, composition at the decisional level, independence, accountability43

#### 4--- The US has no multilateral negotiating credibility---fails.

Rachel Myrick 6/14/21. Assistant Research Professor of Political Science at Duke University. "America Is Back—but for How Long?". Foreign Affairs. 6-14-2021. <https://www.foreignaffairs.com/articles/world/2021-06-14/america-back-how-long>

During his first address to a joint session of Congress on April 28, U.S. President Joe Biden noted that in the dozens of conversations with world leaders he’d had since taking office in January, one comment kept coming up: “We see America is back, **but for how long**?” This **skepticism on the part of other heads of state** is a direct response to the recent past. Under President Donald Trump, Washington **seriously challenged or outright withdrew** from more than a dozen international agreements or institutions, including the Paris climate accord, the Trans-Pacific Partnership, the Iran nuclear deal, and the World Health Organization. But concerns about the nature and longevity of American commitments **extend beyond Trump’s legacy** overseas. Allies of the United States are also reacting to its internal politics and, in particular, to a **deepening partisan divide** that creates uncertainty about the future of U.S. foreign policy. Observing the polarized politics on display in the run-up to the 2020 U.S. presidential election, former Norwegian Prime Minister Gro Harlem Brundtland noted that many European leaders will “no longer take for granted that they can trust the U.S., even on basic things.” The fears are valid. Although foreign policy has traditionally been insulated from political polarization, that is no longer true. On **such issues as multilateralism**, climate change, and terrorism, **Americans are more divided than ever.** The bipartisan foreign policy consensus among both voters and the politicians they elect is eroding. But even worse, **polarization** has created broader, underappreciated consequences for the United States’ ability to enact foreign policy in the first place by chipping away at a key pillar of its power: its **reputation for stability, credibility, and reliability.** THE DEMOCRATIC ADVANTAGE International relations scholars have long recognized that democracies enjoy several advantages when it comes to making foreign policy. For one thing, they are stable. In autocracies, when leaders are removed from power irregularly—such as through revolutions or military coups—the transitions often herald dramatic swings in foreign policy. By contrast, in democracies, where leader turnover occurs in the context of regular elections, foreign policy tends to remain fairly consistent during political transitions. As domestic polarization increases, however, **partisan conflict is more likely to extend into foreign policy.** In the United States, foreign policy remains less polarized than domestic policy. Even so, public opinion polls and patterns of congressional roll call votes show an increasing divergence between Democrats and Republicans on foreign affairs. As these preferences harden, one should anticipate more **dramatic changes** in foreign policy when the party controlling the White House changes. But it isn’t just diverging foreign policy preferences that lead to instability in foreign policy; a rise in the tendency to dislike the opposite party—or “negative partisanship”—also does. This sentiment gives leaders incentives to undo the policies of their predecessors from the opposite party. Some described Trump’s foreign policy agenda as “**incoherent**” and lacking in a grand strategic vision, yet his agenda did have one unifying theme: dismantling the accomplishments of President Barack Obama. Positioning himself as the **“anti-Obama” in foreign affairs**, Trump moved quickly to undo his predecessor’s policies on immigration, trade, and climate.

#### 9---Harmonizing competition policy fails – but the trade DA links to the CP

Cenuk Sayekti, 20. Lecturer in law at Universitas Lancang Kuning, Riau. Her bachelor's and master's degrees are in law from the Universitas Islam Indonesia. "COMPETITION LAW HARMONIZATION: WHAT ASEAN CAN LEARN FROM OTHERS?" Refleksi Hukum: Jurnal Ilmu Hukum 4, no. 2 (2020): 195-216.

CONCLUSION

There is a reason why some regional economic communities delay or avoid the process of harmonization stem from the perception of different treatment to market behavior. Another obstacle is the problem of legal culture and the effect of the history of a nation on its competition policy and law. The central point regarding this obstacle is that ASEAN member states legal differences often stem from different cultures and social preferences. Specific rules are often suited to local traditions and customs, and even if harmonization enhances foreign trade opportunities among the member states, it may impose quite substantial short-run adaptation costs. Accordingly, the chance to harmonize different competition policies and laws in the ASEAN member states cannot be ultimately seen as an uncontroversial positive effort or one that is free of conflict. The increased integration of trade and national laws also creates fault-lines of cultural dissonance.

### Pharma innovation da---2ac

#### 1---Biden xo thumps.

Theresa C. Carnegie and Lauren M. Moldawer 21. \*\*Theresa C. Carnegie counsels health care clients on a variety of transactional, regulatory, and fraud and abuse matters. \*\*Lauren M. Moldawer’s practice focuses on advising health care providers, PBMs, and managed care organizations on a variety of regulatory issues. “Biden Administration Takes Aim at Rising Drug Prices through its Executive Order on Promoting Competition” The National Law Review. 07-20-21. <https://www.natlawreview.com/article/biden-administration-takes-aim-rising-drug-prices-through-its-executive-order>

On Friday, July 9, 2021, President Biden released an Executive Order “to promote competition in the American economy” and to “to reduce the trend of corporate consolidation” (the "Order"). As part of this Order, the Biden Administration **specifically targets competition** in the pharmaceutical industry and sets forth policies to **combat the high cost of prescription drugs.** As the Administration’s first major policy initiative on drug pricing, this Order may serve as a preview of the Administration’s drug pricing reform agenda. Canadian Drug Importation Among the more controversial provisions, the Order supports **importing drugs from Canada** as an effort to reduce prescription drug costs. The Order calls on the Food and Drug Administration (FDA) to work with States seeking to import drugs under Section 804 of the Federal Food, Drug, and Cosmetic Act, known as the Section 804 Importation Program (SIP). FDA, under the Trump administration, previously implemented regulations and guidance to States and other entities seeking to import drugs from Canada through the SIP. In November 2020, Florida submitted a proposal to FDA to begin the importation of a limited number of drugs. HHS Plan to Address Drug Pricing Rather than calling on Congress to address drug pricing, President Biden is requesting that the Department of Health and Human Services (HHS) develop a plan to address drug pricing by the end of the summer (Drug Pricing Plan). Specifically, within 45 days of the release of the Order, the HHS Secretary must develop and submit to the White House, a Drug Pricing Plan to: Continue the effort to combat excessive pricing of prescription drugs and enhance domestic pharmaceutical supply chains; Reduce the prices paid by the Federal Government for such drugs; and Address the recurrent problem of price gouging. Provisions Related to Generics and Biosimilars The Order also includes multiple provisions to increase the availability of generics and biosimilars. It specifically encourages the Federal Trade Commission to use its **rulemaking authority to combat unfair anticompetitive conduct.** In the Order’s press release, the Administration makes it clear that they are targeting “pay for delay” arrangements or other agreements to delay the market entry of generic drugs or biosimilars.

#### 3---pharma jobs are generally high-paying---the industry won’t be affected.

Karen Langhauser, 19. Chief Content Director at Pharma Manufacturing. "Pharma career and salary survey". Pharma Manufacturing. 4-11-2019. https://www.pharmamanufacturing.com/articles/2019/pharma-finds-balance/

Fortunately, external opinions do not appear to be swaying pharma’s internal satisfaction. According to our readers, job satisfaction in the pharmaceutical industry is actually on the rise — more than 91 percent reported their satisfaction levels within the range of “OK” to “very high,” which is better than recent previous survey years. In some cases, results varied by respondent demographics. Gender did not seem to be a factor in happiness, however salary made a difference. The survey found that 62 percent of those making over $100,000 reported “high” to “very high” satisfaction rates, while less than 13 percent of those making $60,000 or under reported the same level of satisfaction. When broken down by industry segments, those working for consulting companies reported the greatest amount of job satisfaction, with a dramatic 81 percent ranking their satisfaction levels from “high” to “very high.” Those working in process control/validation were the least happy (only 27 percent ranked satisfaction levels from “high” to “very high”). Overall job satisfaction continues to rise in the U.S., but only just recently (in 2017) surpassed the 50 percent mark — so despite being in the public hot seat, the pharma industry is [well above average.](https://www.conference-board.org/press/pressdetail.cfm?pressid=7528) What’s driving this satisfaction? According to those surveyed, various factors (see chart below) — but one respondent summed up a common sentiment with this write-in: “Working for an ethical company in a field that provides significant benefit to customers in regards to quality and length of life — satisfaction from knowing that my work has a tangible impact on people’s lives.” What satisfaction looks like Because the definition of “satisfaction” can vary by individual, our survey asked readers which specific factor contributed most to their overall happiness. “Challenging work” was the highest-ranking factor, and has been throughout the history of the survey. This was closely followed by “salary and benefits.” This year, “work/life balance” edged out “opportunity for advancement” to take the No. 3 spot. These results were corroborated by a write-in question that asked respondents to elaborate on what satisfies them most about their current position. Many respondents solidified their previous answer, pointing out how much they enjoy the challenge and diversity of the work they do. “Freedom and control over my projects; solving unsolved problems,” said one respondent. Despite the long hours and stresses of the job (“There is an endless opportunity to get things done,” said one respondent, positively), numerous respondents were pleased to have flexible hours and autonomy in the workspace. Even though less than 15 percent noted “opportunity for advancement” as the most important contributor to satisfaction, many testified to their happiness with the opportunity to excel at their companies. “There are ample opportunities for advancement. The work is quite challenging with aggressive timelines that need to be met — I look at this as a positive, “ said one respondent. Encouragingly, many are finding fulfillment knowing their work has a direct impact on patients. They respect the commitment of their colleagues and those in the field towards this common goal. “Being part of a team that launches products which improve treatment outcomes and overall quality of life,” said one respondent. Also, we are happy to report that pharma still has a sense of humor, as respondents said “lunch” and “ergonomic work chairs” were also sources of job satisfaction. What about the money? Compensation remains strong, stable and congruent with a healthy 2018 U.S. economy as a whole. Similar to last year, just over 25 percent of those surveyed have gross annual salaries between $100,000-150,000, with the next largest group (19 percent) making $150,000-200,000 annually. And 13 percent of respondents indicated their salaries are above $200,000. According to survey results, tenure, education and gender factor into salaries. The majority (83 percent) of those who report gross yearly salaries exceeding $100,000 have more than 10 years of experience in the industry. Just over 39 percent of the surveyed females reported gross yearly salaries exceeding $100,000, while 61 percent of men fell into this bucket. Additionally, 62 percent of those who report salaries exceeding $100,000 have postgraduate degrees. In this year’s survey, 66 percent of respondents reported getting raises last year, with most (71 percent) seeing an increase of 3-5 percent. Just over 12 percent of those who reported earning raises said their salaries were increased by more than 10 percent. The 66 percent of pharma reporting increases are claiming slightly higher raises than they did in year’s survey, which is contrary to what is happening on global level. A [Korn Ferry 2018 Salary Forecas](https://engage.kornferry.com/Global/FileLib/PDFs/KFHG_2018_Salary_Forecast.pdf)t predicated that, adjusted for inflation, employees around the world were expected to see lower wage increases, averaging just 1.5 percent, down from last year’s prediction of 2.3 percent.

#### 6---turn--- suppressed wages and increased unemployment means workers leave industries – destroys innovation – that’s posner and…

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.

#### 7---Pharma monopolies cause skyrocketing costs and undermine innovation.

Garrett Johnson and Wayne T. Brough 19. CNN Business Perspectives. “Big Pharma is abusing patents, and it’s hurting Americans” CNN Business. 09-12-19. https://www.cnn.com/2019/09/12/perspectives/drug-patents-abuse/index.html

The American patent system has, since our nation’s founding, served as a cornerstone of innovation. But the pharmaceutical industry’s willingness to undermine this system is having real **consequences for American patients.** The **skyrocketing cost of health care** has been fueled by rapidly rising prescription drug prices, which are significantly higher for Americans than patients in other wealthy countries. While some argue that this is just the cost of being a global innovator, it is more complicated than that, and a key source of the problem is the abuse of the patent system. Health care costs could be brought down through greater availability of generic drugs and biosimilars - drugs that are identical to branded drugs but distributed by another company after the original patent expires. Unfortunately, these lower-cost alternatives face an uphill battle to gain market access because pharmaceutical companies employ myriad tactics to prevent competition. Large pharmaceutical companies have continually engaged in the strategic accumulation of patents to restrict patient access to more affordable drugs by **delaying the entry of generic options into the market.** While some of the additional patents represent true incremental innovation, many are deployed strategically to preserve a company’s monopoly rights on the original discovery. All in all, the tactics used are not new or useful, they are simply a way for Big Pharma to maintain their drug monopolies and continue **charging American consumers more for drugs** than they could if they had competition in the market. Take Namenda, a drug produced by Forest Laboratories used to treat the confusion associated with Alzheimer’s Disease. Forest Laboratories faced generic competition on Namenda starting in 2015. Instead of competing with a generic drug on the market, the company responded by changing its formulation of Namenda from a twice-daily pill to a once-daily version. This new version was patented with protection on the product extending to 2029. The actions of Forest Laboratories were a clear example of the company’s attempt to game the patent system. In fact, they were successfully sued by the State of New York for attempting to block patients from having a choice between the twice-daily and once-daily pills and were forced to settle with New York and abandon their efforts. By gaming the patent system to secure monopolies on their products, pharmaceutical companies are **removing the motivation to innovate** because they are simply creating new patents that are similar in scope to previously obtained ones, thus creating a captured market. This lack of competition has resulted in price increases averaging 68% since 2012 for the top selling drugs in the United States.

#### 8---Big pharma isn’t innovative.

Audrey Clare Farley 19. A lecturer in the history department at Mount St. Mary’s University. “Big Pharma Is Pushing a Big Lie” The New Republic. 05-10-19. https://newrepublic.com/article/153864/innovation-drug-price-myth

Lawmakers have floated other measures to reduce the cost of drugs to consumers, such as capping U.S. list prices at the median in other developed nations, authorizing Medicare to directly negotiate drug prices, and allowing the personal importation of prescription drugs from Canada. The pharmaceutical industry has invariably responded to these proposals by blaming high costs on “middlemen” who don’t pass rebates to patients and by doubling down on the **“innovation” myth**—the **unproven notion that high list prices are necessary to fund tomorrow’s breakthroughs.** For instance, at an April House Energy and Commerce Committee hearing on insulin prices, a representative of Sanofi, a French multinational pharmaceutical company, began her testimony with an anecdote about how Sanofi’s PCSK9 inhibitors (the latest generation of cholesterol drugs) saved the lives of her husband and 7-year-old son, both of whom have a genetic disorder called Familial Hypercholesterolemia (FH). In doing so, she inferred that the steep price of insulin and other drugs is necessary to advance medicine and protect future generations. The trouble is Sanofi didn’t identify the PCSK9 gene or link this protein-regulating gene to FH. Nor did the company have the idea to develop PCSK9 inhibitors to reduce the risk of cardiac events in those with this condition. Researchers at public hospitals and universities around the world collaborated on these tasks. Realizing the potential for profit, the drugmaker shepherded the therapy through later stage trials and FDA approval. Until very recently, Sanofi’s PCSK9 inhibitor, Praluent, retailed at $14,000 per year and was not always covered by insurance. Like insulin, the drug was priced out of many patients’ reach. It’s common for industry representatives to tell stories of individuals whose lives have been saved by innovation—or of individuals who are desperately waiting for a breakthrough. These emotional appeals should not distract from the facts: Big Pharma does not apply the majority of profits from costly medicines to research and development (R&D); **Big Pharma does not drive innovation**; and Big Pharma does not meaningfully invest in treatments for rare and neglected diseases. As industry representatives are sure to plug “innovation” again at the next hearing, and at other high-level discussions on drug prices, it’s important to understand the industry’s actual role in the development of lifesaving medicines. Industry spending on R&D is a **fraction** of what it spends on **marketing and lobbying**, and as many academics and journalists have noted, it also pales in comparison to the drug manufacturers’ claims. Citing a 2014 report by the industry-funded Tufts Center for the Study of Drug Development, manufacturers have posited that it costs about $2.6 billion dollars to develop a new drug. The cost, according to consumer advocacy groups like Public Citizen, is actually closer to $161 million—an amount manufacturers can sometimes make back within days of introducing a product. For instance, drugmaker Novartis likely recovered R&D expenses for the leukemia drug Gleevec in less than two weeks. And drug companies’ contributions to R&D are even slimmer when considering government tax credits that come with these expenditures, which can reduce corporate costs by almost 50 percent. Drugmakers would also have us believe that scientists in corporate laboratories conduct the “basic” or preliminary research for most new medicines. Their ads feature in-house researchers peering in microscopes and studying brain scans. In reality, it is **the federal government** that **funds 84 percent** of initial drug research, and charitable organizations additionally contribute on top of that. A recent study showed that all 210 of the new drugs approved by the FDA between 2010 and 2016 were **funded by the National Institutes of Health.** This taxpayer-funded agency was behind Sovaldi, a novel treatment for Hepatitis C; Gleevec, which treats chronic myelogenous leukemia; and Cervarix, Gardasil, and Gardasil 9, vaccines that protect against HPV.

### Politics da---2ac

#### 1--- Won’t pass- Biden not pushing, distrust, VA election

Heather Caygle et al 10-29-2021, with SARAH FERRIS and OLIVIA BEAVERS "Weary Dems keep reliving Infrastructure Week," POLITICO, https://www.politico.com/news/2021/10/29/democrats-infrastructure-week-517487

House liberals left the Capitol triumphant on Thursday night after once again scuttling a major vote. Every other Democrat was fuming. For the second time in less than a month, Speaker Nancy Pelosi and her leadership team had to delay a vote on Senate-passed infrastructure bill amid progressive opposition, denying President Joe Biden a much-need win as Democrats’ bigger, $1.75 trillion social spending plan also remains in limbo. “I think it’s wholly apparent that today was not a success,” said Virginia Rep. Abigail Spanberger, whose state has a high-stakes gubernatorial showdown Tuesday that Democrats were hoping to boost with the infrastructure vote. “Because people choose to be obstructionists, we’re not delivering these things to my state or to the rest of the country,” the swing-district Democrat added. “I guess we’ll just wait because apparently failing roads and bridges can just wait in the minds of some people.” Democrats slunk out of the House chamber embarrassed — furious at the liberals who dug in and a White House that refused to pressure them to relent — and openly fretting about the long-term repercussions, given the tough climb they face in the midterms. Progressive leaders are predicting the party will work out its differences and pass both bills in the House within days. But it’s a far cry from what top Democrats had hoped to deliver ahead of a critical week for the party. “If I'm going to be honest, yeah, I’m worried about it,” said Rep. Gregory Meeks (D-N.Y.). “There’s a lot on the line here — a lot on the line. … We fill our cup up by getting stuff done. It’s not over.” The party started with a clear plan for this week: send a $550 billion infrastructure bill to Biden’s desk that would start his foreign trip with a marketable victory and offer a much-needed boost to Virginia Democratic candidate Terry McAuliffe ahead of a nail-biter gubernatorial election Tuesday. Instead Democrats are going home with nothing to show but a short-term extension of highway and transit programs and promises to reconvene next week and try again. Senior party members insist they had good reason to believe this week would be different from late September, when another wall of liberal opposition forced Pelosi to punt an infrastructure vote. This time they had a Biden-blessed deal, a chunk of legislative text and a full-throttle whipping operation. They still couldn’t overcome the trust gap between the party’s liberals and their moderate colleagues across the Capitol: Sens. Kyrsten Sinema (D-Ariz.) and Joe Manchin (D-W.Va.). “All they need to do is one simple thing, which is to affirm they are in agreement with the framework. They just need to publicly announce it. Clearly they aren’t willing to do that, which is saying a lot,” said Rep. Ruben Gallego (D-Ariz.), who has not ruled out a primary challenge to Sinema. The House’s departure Thursday night virtually guaranteed there would be no major vote on Biden’s agenda ahead of McAuliffe’s election on Tuesday. If he loses, many Democrats worry that could spell doom for their already-teetering domestic agenda as the party’s two wings continue to bicker over the contours of their $1.75 trillion spending package. “Our whole argument as Democrats is premised on the idea that we're going to make things better in real life. As opposed to the other side, which just constantly lies and seems to live in a world of misinformation and fantasy,” said Rep. Conor Lamb (D-Pa.). “But if we're going to win that argument," he added, "we actually have to do the things we said we're going to do.” While the rest of the caucus seethed, progressives defended their refusal to support the infrastructure bill amid lingering uncertainty about Sinema and Manchin's commitment to the social spending framework Biden unveiled Thursday morning. “I told anybody that would listen that we did not have the votes for [an infrastructure] vote tonight,” said Congressional Progressive Caucus Chair Rep. Pramila Jayapal (D-Wash.). Jayapal went on to say that Biden did not explicitly ask for a vote on the infrastructure bill when he visited the Hill Thursday morning — which many on the left took as a tacit green light to continue opposing Democratic leadership’s push for a vote until they were ready. Biden’s lack of a clear demand for a Thursday vote may have had the unintended effect of emboldening liberals, giving them political cover to tank an infrastructure bill that Pelosi and other leaders were whipping. “The speaker did, but the president did not” ask for Democrats' infrastructure vote, Jayapal said. “The president said he wants us to pass both bills and that this coming week was going to be critical for that. We will deliver both these bills to him, from the House, next week.” Senior Democrats were privately frustrated at Biden’s lack of direct call to action, and some sought to convince the White House to further clarify his position throughout the day, with no success. “Had the president led us down that hallway to the House floor this morning ... I think it would have been close,” said Rep. Dean Phillips (D-Minn.). “If the vote was kept open a long time, I think with Republican votes it would have passed.”

#### 3--- Biden bungled negotiations

Cristina Marcos, et al 10-28-2021, with SCOTT WONG AND MIKE LILLIS "Progressives win again: No infrastructure vote Thursday," TheHill, https://thehill.com/homenews/house/579030-progressives-win-again-no-infrastructure-vote-tonight

House Democratic leaders abandoned a third attempt on Thursday to clear a Senate-passed bipartisan infrastructure bill, as progressives held firmly opposed without deeper assurances that a larger package of social benefits is a slam dunk. The third punt in a month came after President Biden made a rare visit to the Capitol to beseech House Democrats to help him advance his agenda as a matter of demonstrating that American democracy can still function. The visit was hailed by lawmakers of all stripes, but it did little to convince the liberals to vote immediately on the infrastructure bill. And the delay has sparked a new round of finger-pointing from lawmakers already frustrated with the months-long impasse and Biden’s sinking approval numbers. “Not good optics. It’s terrible optics,” conceded Rep. Alan Lowenthal (D-Calif.), who wanted the House to pass the infrastructure bill on Thursday. “People are frustrated right now,” added Rep. Jim Costa (D-Calif.), a moderate Blue Dog. “There’s a lack of trust, and you got a lot of members here that have been here four years or less and they don’t seem to understand how you get things done.” One of the Blue Dog Coalition leaders, Rep. Stephanie Murphy (D-Fla.), later issued a statement, saying the group is “extremely frustrated that legislative obstruction of the [infrastructure bill] continues — not based on the bill’s merits, but because of a misguided strategy to use the bill as leverage on separate legislation.” Some of the frustration was also directed toward the Senate centrist holdouts — Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — who have resisted large parts of Biden’s agenda and forced him to settle far below his initial request of $3.5 trillion in new spending. “Basically it’s the [dis]trust of Manchin and Sinema,” said Rep. Steve Cohen (D-Tenn.). “That’s the problem.” But there was also grumbling that Biden and his administration have bungled the negotiations from the start by focusing initially on the Senate and leaving House members feeling left out. "Even in the beginning of the summer, this was about the White House and the Senate, and the House was excluded," said Rep. Alexandria Ocasio-Cortez (D-N.Y.). "This is, I think, the result of that omission."

#### 4---Congress has proposed the plan---there’s support.

Tirza J Angerhofer and Roger D Blair 21. Tirza J Angerhofer, Doctoral Fellow, Department of Economics. \*\*Roger D Blair, Professor, Department of Economics and Affiliate Faculty of Law, University of Florida. “Considerations of Buyer Power in Merger Review” Journal of Antitrust Enforcement. 10-18-21. <https://academic.oup.com/antitrust/advance-article/doi/10.1093/jaenfo/jnab015/6400043?searchresult=1>

Recently, there has been **increasing recognition** of the adverse welfare effects of buyer power in various jurisdictions around the world.2 First, a firm that has monopsony power can reduce the quantity that it buys in order to depress the price that it pays for inputs which leads to a social welfare loss. Secondly, a firm with bargaining power can use the threat of walking away from the negotiations to extract surplus from suppliers. Mergers have the potential to increase buyer power and thereby cause substantial . anticompetitive harm. But this harm has traditionally been ignored in merger review. Our improved understanding of the relationship between mergers and buying power has led to **requests by Congress and policymakers** that the US Department of Justice (DOJ) and the Federal Trade Commission (FTC) **pay closer attention to threats of monopsony when conducting their merger reviews.** In the USA, at least, policymakers have focused their efforts on monopsony power due to its clear social welfare impact and its relevance to labour markets. Congress and policymakers have **proposed bills** that would encourage the Agencies to **consider monopsony in merger review** and would help them to do this by increasing their budget.3 In both the House and Senate, a **proposed bill would amend section 7 of the Clayton Act** by explicitly including monopsony in the statutory language in order to strengthen the emphasis on monopsony in merger review.4 As we will show in this Article, both the economic theory and the empirical evidence provide support for considering the potential effects of monopsony in merger review. This evidence is particularly clear in labour markets but is also relevant to other input markets.

#### 6--- debt ceiling thumps

Anthony Adragna 9/29/21. Energy reporter and author of Morning Energy at POLITICO. “Chuck Schumer forcefully said Democrats will not raise the debt ceiling by reconciliation..” https://www.politico.com/minutes/congress/09-29-2021/schumer-draws-debt-line/

Flirting with calamity: The leaders of the Senate appear only more hardened in their positions on the debt ceiling Wednesday. Majority Leader Chuck Schumer forcefully articulated his conference will not go at it alone through reconciliation, which Minority Leader Mitch McConnell has said it is what they must do. "This body cannot and will not go through a drawn-out and unpredictable process sought by the minority leader." — Majority Leader Chuck Schumer on using reconciliation to lift the debt ceiling. What Schumer's worried about: He's expressed fears to his conference the process could take 3-4 weeks, as our Burgess Everett reports, and there are concerns about whether GOP lawmakers would even cooperate in committee. Republicans say it'll take less time. Republican response? Minority Leader Mitch McConnell did not address the debt limit during his opening remarks, but has repeatedly vowed Republicans will not help. Reminder: Republicans say they want to avoid a default, but have systematically obstructed any effort to reduce the odds of it happening. They blocked an effort by Schumer on Tuesday to lower the threshold for lifting the debt ceiling to 50 votes — without reconciliation.

#### 7---PC is fake---especially true with Biden and republicans drag their feet regardless.

Waldman 20 [Paul Waldman is an opinion writer for the Plum Line blog. Before joining The Post, he worked at an advocacy group, edited an online magazine, taught at university and worked on political campaigns. He has authored or co-authored four books on media and politics, and his work has appeared in dozens of newspapers and magazines. He is also a senior writer at the American Prospect. 12-2-2020, "Opinion: Joe Biden has to move fast," Washington Post, accessed 7-13-2021, https://www.washingtonpost.com/opinions/2020/12/02/joe-biden-has-move-fast/] //BY

Slow-walking will absolutely be the Republican strategy, on both appointments and legislation. They won’t come out and say they’re going to stonewall every appointee and refuse to allow any legislation to pass; instead they’ll say that they just want to make sure Biden doesn’t stock his administration with radical leftists and propose far-out socialist laws. Send us the nominees and the bills, and we’ll consider them. It’ll just take some time. Weeks will then stretch into months, and the Biden agenda will languish. They’ve done it before — Obama himself describes how they endlessly dragged out negotiations on the Affordable Care Act by claiming they might support it — and they’ll do it again. That’s the Republican plan. The first step to getting around it is to understand that the public won’t blame gridlock on the ones who are causing it. They’ll just see a bunch of bickering in Washington with nothing getting done, and Biden will be the one who takes the blame. Once you realize that the public is neither aware of nor particularly concerned about process questions, you can stop worrying about whether Republicans will squawk at this appointment or that executive order — because they’ll squawk no matter what you do. If it’s a good idea and you think the results will be good, then just do it. As quickly and comprehensively as possible. As David Roberts of Vox observes: In 2009, Obama and his aides made the mistake of thinking that their major initiatives had to be rolled out one at a time in sequence, because he had a finite store of “political capital” that had to be spent carefully. But political capital is not something that exists apart from any particular issue; it isn’t a special sauce that has to be poured on a policy in order to make it palatable. And with the parties as polarized and unified as they are, political capital has become all but meaningless. There may have been a time when a popular president possessed so much capital that a senator from the opposition party would feel compelled to support him on part of that president’s agenda, but that time is long gone. There is no account Biden can draw on to turn Republican “no” votes into “yes.” So setting up a series of high-profile policy battles may be the opposite of what Biden should do. The unfortunate fact is that he may not have the opportunity to do much in the way of big legislation on health care or climate change or anything else, and if he has only executive power to work with, it makes it all the more urgent to move quickly. Which means getting staff in place immediately and then unleashing them. The Revolving Door Project argues that Biden should give as much authority as possible to the agencies to let them dismantle their particular corners of the Trump legacy on their own, because the task “simply will not happen if approached sequentially or micromanaged” by a White House staff with limited bandwidth. That means moving on every policy area all at once. There’s nothing to be gained by putting off any part of Biden’s agenda. Whatever he can do given the limits of his power, he should do as soon as possible, in a flood of policymaking. Even if Democrats win both Georgia races and control the Senate, Biden should acknowledge that he likely has two years until the 2022 midterm elections to pass whatever legislation he can. Not only will Democrats probably lose one or both houses in the inevitable backlash (as happens to most presidents in their first midterm), the only possible chance at forestalling that result is to get results, as many as possible, that he can show the voters. Republicans will complain that Biden is being partisan, uncompromising, taking a “my way or the highway” approach. It will be a strategy to convince everyone of the lie that Biden and Democrats might be able to find some way of winning them over, when in fact they’ll be implementing a strategy of total opposition. If Biden follows them on that fruitless quest, he’ll be running in circles while crucial time passes and nothing gets done. The only option for him is to decide not to care about Republican whining and do what he got elected to do with all haste. The alternative is failure.

## 1ar

### Inequality adv---1ar

#### 6---Worker welfare boosts 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

According to incentive theory, providing employees with better welfare can motivate them to work hard and ultimately create higher corporate value. In modern management theories, employees are considered strategic asset that can provide additional value to the corporation, particularly in knowledge-based industries, such as manufacturing and pharmaceutical corporations. According to these theories, employee welfare is particularly crucial to drive employee engagement which ultimately translates into higher performance and enhanced shareholders’ values. Consistent with this view, Levine (1992) and Wadhwani and Wall (1991) find that high levels of wages lead to enhanced productivity. Moreover, Perry-Smith and Blum (2000) document that family-friendly policies within corporations lead to increasing market share, and larger corporate profits. More recently, Edmans (2011) utilizes a value-weighted portfolio of the “100 Best Corporations to Work for in America” to investigate the relationship between employee satisfaction and long-run stock returns. The results show that this portfolio earned an annual four-factor alpha of 2.1% above industry benchmarks during the period from 1984 to 2009. The author concludes that corporations with high levels of employee satisfaction generate superior long-term stock returns. The author attributes these findings to the failure of the stock markets to incorporate intangible assets (such as employee well-being) fully into stock valuations. Affected by incentive theory, some corporations strive to provide welfare for their employees in all aspects, making them satisfied and happy, as happy employees are often more efficient than unhappy employees (Oswald et al., 2015). Increasing remuneration (Mas, 2006) can increase employees’ enthusiasm for work and create higher corporate value. Other corporations enhance their value creation, profitability and productivity by providing employees with more comfortable working environment (Faleye and Trahan, 2011). Negative incentives, such as layoffs and pay cuts, dampen employee enthusiasm and lead to low productivity and a loss of corporate value (Ghaly et al., 2015).

### Welfare pic---1ar

#### 5---the 1nr day evidence is irrelevant---its “distinction” is that the plan could be hipster antitrust, which isn’t enshrined in law---BUT plan can be cws

turned to insert

1NC Day ’20 [Gregory; Fall 2020; Assistant Professor, University of Georgia Terry College of Business, Courtesy Appointment, University of Georgia School of Law; American Business Law Journal, “Anticompetitive Employment,” vol. 57 no. 3; KP]

It tests data from the Bureau of Labor Statistics to show that labor cartels inflict costs on workers which they suffer as consumers, producing the types of injuries that antitrust laws are supposed to condemn. As for the debate over whether antitrust’s consumer welfare standard does or should include workers, the implication is that workers are consumers. This Article proposes an interpretation of existing antitrust law that would not only advance the competitive benefits of labor but also resolve the current problems frustrating antitrust’s analysis of employment markets. Drawn from the empirical results, the primary advent would be to condemn all no-poaching, no-hire, and similar cartels restricting labor’s freedom as per se illegal.

#### 6---not functionally competitive

turned to insert

1NC Day ’20 [Gregory; Fall 2020; Assistant Professor, University of Georgia Terry College of Business, Courtesy Appointment, University of Georgia School of Law; American Business Law Journal, “Anticompetitive Employment,” vol. 57 no. 3; KP]

Several aspects of antitrust’s framework explain why labor cartels have evaded antitrust scrutiny. The chief tension involves antitrust’s purpose, which is to promote “consumer welfare” in economic terms.20 To determine if conduct impaired consumer welfare and thereby violated antitrust law, the analysis typically scrutinizes whether prices increased since consumers are primarily concerned about the prices they pay.21 Here, lessening wages can enable firms to sell goods at cheaper prices, benefiting consumers.

22 A similar issue is that cartels tend to harm only a small subset of workers instead of eroding wages throughout the greater market. This poses an obstacle for workers, as one opinion noted, since the Sherman Act is “designed to redress the injuries of consumers where an entire market is unlawfully constrained.”23 As a result, courts and antitrust agencies have largely refused to condemn labor cartels, asserting that employers may collude so long as their agreement achieves a goal other than wage fixing.24 In Ogden v. Little Caesar Enterprises, Inc., 25 the court ruled that franchisees of Little Caesars were justified in enforcing a series of no-poaching agreements because it helped Little Caesars to compete against rival pizza chains.26 Other courts have likened labor cartels to non-compete clauses that workers were merely unaware of, ignoring the differences between assenting to a labor restriction versus having employers secretly impose one on workers. 27 As for the DOJ, it has not only refused bring criminal charges against colluding employers28—despite having the power to do so29—but its chief, Makan Delrahim, has insisted that a labor cartel “absolutely protects workers because it provides small business owners the incentives to train employees.” 30 Since some courts have condemned labor cartels while others have deemed identical restraints to be procompetitive, 31 a district court lamented in 2019 that labor cartels pose antitrust challenges “in their infancy.”32 This Article uses empirical methods to argue that antitrust must condemn labor cartels as per se illegal, given the magnitude of injuries inflicted on workers, markets, and consumers. It demonstrates that labor cartels erode the purchasing power of workers as consumers—since a reduced paycheck produces the same effects as elevated prices—which is precisely what the antitrust laws were meant to prohibit.

33 Antitrust law should even ban no-poaching and nohire agreements when formed for an ostensibly valid purpose (e.g., to protect trade secrets) because employers could have achieved the same goals using less coercive means; non-compete agreements, at least, provide labor with a semblance of notice and bargaining power without sounding antitrust alarms.34

### Pharma da---1ar

#### 7---Second Circuit thumps.

Shaina Vinayek 18. J.D. Candidate, Georgetown University Law Center. “Making the Switch: How Little Is Too Little in a Competitive Market?” Georgetown Law. 2018. https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2018/05/16-1-Making-the-Switch.pdf

Innovation is considered presumptively procompetitive. But **innovation is often coupled with anticompetitive restraints,** such as the removal of an earlier version of the product from the market (“hard switch”), incompatibility with other products on the market, or predatory pricing. In setting the legal standard for innovation, Courts have struggled to decide whether the presumption of legality encompasses the restraints as well as the innovation itself. Though courts have shied away from assessing the design of a product, they **have chipped away at the presumption of legality** that blanketed innovations and the restraints that made them profitable. In the pharmaceutical context, the **Second Circuit recently held** that where a monopolist removes a product from the market in an effort to “switch” the demand

from this original product to a reformulated product, that the innovation must be more than marginal to **avoid condemnation under Section 2.** The court left open whether producers could escape condemnation by allowing consumers to obtain the original product or a modest reformulation. In this Note, I analyzed whether such a “fix” was enough to pass muster under each of the legal standards in modern case law. I showed that a “soft switch” should not be presumed legal or treated as a preferable alternative to a “hard switch”, but rather should be considered a new issue to be analyzed for legality. I further proposed that courts have considered the quality of innovations in the past and should continue to do so in the future for the sake of consumer welfare.

#### 3---exaggeration.

Richard Frank 19. A professor of health economics at Harvard Medical School and previously (2014-2016) served as assistant secretary for Planning and Evaluation at the U.S. Department of Health and Human Services. “Drug companies exaggerate — controlling drug prices won't threaten innovation” The Hill. 11-13-19. https://thehill.com/opinion/healthcare/470266-drug-companies-exaggerate-controlling-drug-prices-wont-threaten-innovation

In fact, the pharmaceutical industry frequently claims that any efforts to control prescription drug prices “threatens future innovation." The result is that for the **past 50 years** we have strongly emphasized innovation over affordability. It is time to **reconsider that balance. Drug companies have exaggerated the threats to innovation.** Most new drugs **aren’t that innovative**. The existing proposals to reduce prices leave many opportunities to make money from truly innovative drugs. And the drug industry could do a great deal to make their research and development activities much more efficient thereby reducing the need for such high prices. Let’s start with the level of innovation being supplied by the pharmaceutical industry. The Government Accountability Office (GAO) recently reported that novel drugs — those recognized by the FDA as meeting a previously unmet need or significantly advance patient care or public health — accounted by between **8 percent** and 18 percent of all drug approvals between 2005 and 2016. Academic research and industry data reflect a similar pattern. That is, the majority of new products enter markets where 5 products are already being sold Moreover, only 1/3 of products approved under priority review by the FDA were new to their class of treatments. So if drug companies claim lowering drug prices means somewhat fewer new drug launches, remember that there are numerous new products sold every year whose **elimination would have little to no impact on the health of Americans.**

#### 4---reformulations.

Jonathan Tepper 18. A founder of Variant Perception, a macroeconomic research group that caters to asset managers. With Denise Hearn, he is co-author of The Myth of Capitalism: Monopolies and the Death of Competition. “How Big Pharma kills off competition” Unherd. 11-16-18. https://unherd.com/2018/11/big-pharma-kills-off-competition/

When patents are about to expire, for example, the pharmaceutical industry seeks **endless extensions through ‘reformulation’** of their drugs or minor modifications to the methods of delivery. Reformulation involves changing the drug just enough to obtain additional patent protection, while keeping enough characteristics the same, so that previous clinical testing results can be relied on to obtain FDA approval. There is **no new innovation**, no new discoveries or any greater benefit to patients, yet companies can **continue to charge high prices.** For example, the Orphan Drug Act of 1983 regulated the approval of drugs for rare diseases and gave a drug companies even greater exclusivity. In theory, this would encourage drug companies to find cures for diseases that might not have a big market. The problem is that Orphan Drugs are not in fact rare. They make up

20% of all global prescription drug sales. Incredibly, 44% of new drugs approved in 2014 had orphan status, and due to pricing they are almost all the most expensive drugs. Now pharmaceutical companies are **taking advantage of these incentives to gouge patients, insurers and the government.** Even once patents expire, regulations and bureaucracy provide another even greater barrier to entry for challengers who might want to bring new medicines to market. All new drugs are approved by the FDA to make sure that they work and are not harmful. This is an essential job. Generic drugs, though, are not new or unknown. They are identical to a brand name drug that is off patent in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use. Yet the current FDA approval process for generics is extremely onerous. Drug makers can charge what the market will bear because **the magic of competition is missing**. On average, a generic takes between three and four years to be approved. Given how long this process takes, it is no surprise the FDA’s backlog of generic drugs stands at an all-time high. In 2014, nearly 1,600 applications for generic drugs were submitted to the FDA. By the end of the year, not a single drug was approved due to a backlog of over 4,700 generics from previous years. Fast-forward to July of 2016, and 4,036 generic drugs awaited FDA approval, yet very few were even processed.