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### Inequality---1AC

#### Advantage 1 is Inequality.

#### Increased concentration of buyer power in labor markets drives inequality---only antitrust can address the supply and demand side of wage suppression.

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A détente is especially desirable today in light of the severe stagnation in American wages. In the past thirty-five years, U.S. gross domestic product has all in all grown but the purchasing power of the average worker has barely changed.3 Labor’s share of national income declined precipitously in the 2000s, and in the five years after the Great Recession it was lower than at any point since World War II.4 Because most people get most of their income from labor, and because those who get most of their income from capital tend to be wealthy, this income shift has dramatic consequences for inequality.

Economists and policymakers have advanced numerous explanations for this troubling trend ranging from the decline of unions, to tighter monetary policy, to increased trade liberalization, and more.5 One explanation that has received attention in recent years is an apparent epidemic of market concentration and flagging competition.6 A growing body of evidence suggests that over time fewer and fewer firms have come to dominate sectors across the economy.7 One study found that from 1982 to 2012, the share of sales by the sectors’ top four firms increased in manufacturing, finance, services, utilities, retail trade, and wholesale trade.8 Average markups above cost—a manifestation of market power—rose from eighteen percent in 1980 to sixty-seven percent in 2014.9 This increase in concentration is due, in part, to a growing wave of mergers. By one count over 325,000 mergers have been announced since 1985.10 That year, around 2,000 mergers with a value of a little over $300 billion were announced.11 In 2018, 15,000 mergers occurred—valued at just under two trillion dollars.12

The ability of firms to charge prices for their products or services that exceed the competitive level harms workers in their role as consumers, and the reverberating inefficiencies have consequences for wages as well.13 Workers are harmed more directly, though by firms with buyer power in labor markets. Instead of enabling firms to charge high prices for the goods or services they sell, buyer power—also known as monopsony power—allows firms to push wages below the level workers would receive in competitive labor markets.

A recent study applied the Herfindahl-Hirschman Index (HHI), which is used to measure market concentration. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) (“the agencies”) used HHI in merger review, and found that at least forty percent of job markets fell into the “highly concentrated” category, making them especially susceptible to anticompetitive behavior by employers.14 The hiring markets for the twenty-five percent most concentrated occupations in almost every commuting zone in the country have concentration levels nearly tripled the “highly concentrated” threshold.15 In commuting zones across middle America, the hiring market for nearly every occupation is highly concentrated.16 As discussed below, a concentrated labor market generally increases the buyer power of participants in that market. Recent research on labor supply elasticity, which is an indicator of vulnerability to employers’ market power, further challenges traditional assumptions of competitiveness in labor markets.17

Historically, antitrust enforcers have given far less attention to firms’ power as buyers than as sellers and have been particularly hesitant to check their power as buyers of labor. However, the tide may be beginning to change. Federal and state enforcers have begun to challenge anticompetitive labor contracts,18 and there is a small but growing body of precedent addressing increased buyer power in mergers.19 In 2016, the Obama Administration’s Council of Economic Advisors issued a report describing the problem of labor market power and encouraging greater attention to the issue by the antitrust enforcement agencies.20 Separately, then-Acting Assistant Attorney General Renata Hesse stated that antitrust enforcement efforts should not only be concerned with the welfare of consumers, but should “also benefit workers, whose wages won’t be driven down by dominant employers with the power to dictate terms of employment.”21 Nevertheless, to date, the agencies have never blocked a merger on the basis of harm to workers.

There are many reasons that may account for the dearth of enforcement, including misunderstandings of the relationship between labor and antitrust laws, the momentum of precedent focused on seller-side harms, and the resistance of some to increased antitrust enforcement as a general matter.22 In addition to these practical and ideological impediments, mistaken intuitions about the economics of buyer power create obstacles for enforcement. At first glance it would seem that if firms use their buyer power to lower their costs, downstream customers are ultimately benefitted. Therefore, the consumer welfare standard, which underpins modern antitrust enforcement, would seem to counsel against intervention contrary to buyer power. In most cases, though, this intuition is simply wrong.23 More competitive labor markets are not just good for workers; they are good for consumers too.

Clarifying the relevant interests at stake is crucial as policy reforms begin in earnest, and there is reason to believe that such reforms are on the horizon. Several politicians have recently advocated for greater antitrust scrutiny of labor markets. For example, in 2017 Senator Amy Klobuchar introduced a bill that would require the enforcement agencies to pay greater attention to buyer power in merger review.24 Senator Elizabeth Warren—who seeks more interventionist antitrust policy on many fronts25—and Senator Cory Booker—who in 2017 sent a letter to the DOJ and FTC citing concern with the failure of the agencies to address labor market power—have also taken up the cause.26

Labor market issues are also garnering increased attention from antitrust scholars.27 In an article published in 2018, C. Scott Hemphill and Nancy Rose argued for more interventionist merger policy directed at various forms of buyer market power.28 The same year, Suresh Naidu, Eric Posner and Glen Weyl published Antitrust Remedies for Labor Market Power, a sweeping analysis of the myriad options available to enforcers to promote more competitive labor markets.29 This legal analysis has been spurred by a growing body of empirical work on buyer power in labor markets.30 An array of scholars concluded that labor market power is a problem and one that antitrust institutions should do more to address.

This paper similarly argues that buyer power—and specifically buyer power in labor markets—deserves greater antitrust scrutiny and, to that end, develops a framework for systematically evaluating labor market power in merger analysis. The enthusiasm of some progressive politicians for more interventionist antitrust policy has drawn skepticism from many antitrust practitioners and scholars who worry that reforms will unmoor antitrust policy from its foundational principles and turn antitrust enforcement over to political whims.31 At least with respect to labor market power, however, economic theory and empirical evidence support increased enforcement without any reform of the basic legal framework and without deviating from substantial consensus about the proper role for antitrust in the economy.

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

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Of course, this is not the world in which we live. Even the corner grocery store knows it can raise its prices a little bit without losing all of its customers, which is what the standard competitive theory suggests. More and more, firms have demonstrated high and increasing levels of market power (Philippon 2019; Stiglitz 2019). At the same time, the bargaining power of workers has weakened.

It was never an equal match. An employer typically can find an alternative worker far more easily than a worker can find an alternative employer. This is especially so during slack periods in the labor market, or in places where there has been persistent unemployment. Leaving or losing a job is often greatly disruptive to workers and their families. There are mortgages to pay, children to feed, bills coming due. From the perspective of workers, jobs are not easily substitutable.

As the chapters in this volume make abundantly clear, this imbalance of market power has consequences. It enables firms to raise prices for goods and services—lowering the real incomes of workers. It enables firms to suppress wages of workers below what they would be in a competitive marketplace—contributing to the inequality crisis facing the country. This economic inequality gets translated into political inequality, especially in our money-driven politics, resulting in rules that evermore favor big corporations at the expense of workers. The growing political inequality, in turn, hampers economic performance, and ensures that most of the benefits of our anemic economic growth go to those at the very top (Stiglitz 2012).

In the middle of the 20th century, John K. Galbraith (1952) described an economy based on countervailing power—where labor institutions and government checked the power of large corporations and financial institutions. But policy choices over the past half century have upset this balance in ways that have weakened not only the workers, but also the economy and the country. This volume explores what has happened by concentrating on one understudied part of the problem: the labor market.

Explaining the Weakening of Workers’ Bargaining Power

Multiple factors have contributed to the weakening of workers’ bargaining position. This volume focuses specifically on the ways that employers have increased their market power over workers.

Employer Concentration

Permissive antitrust enforcement has promoted concentration across industries, reducing the number of employers—particularly those in rural areas (Stiglitz 2016).1 With few alternatives, workers must accept the low wages that large local employers offer. More precisely, limited competition by buyers—in this case, employers who buy labor services—gives rise to monopsony power.2 Any firm with monopsony power knows that if it hires more workers, it will drive up the wage. The marginal cost of hiring an additional worker is thus greater than the wage. The result is lower employment and lower wages than if there were a competitive labor market. The chapter by Marinescu in this volume forcefully documents the degree of monopsony in labor markets across the United States, especially in rural areas—areas where, not surprisingly, wages lag behind the rest of the country.

Collusion

Typically there is some, but limited, competition in the labor market, but it is competition that is insufficient to achieve anything approximating what would emerge in a truly competitive marketplace. But employers often do not like even this limited competition, because even some competition means that wages are higher than they would be with no competition. Thus, firms sometimes collude to not compete; and that collusion drives down wages. The incentives for firms to do this—if they can get away with it—are obvious: collusion has been a feature of capitalism from the start. As Adam Smith observed in The Wealth of Nations, “Masters are always and everywhere in a sort of tacit, but constant and uniform, combination, not to raise the wages of labour above their actual rate. . . . Masters, too, sometimes enter into particular combinations to sink the wages of labour even below this rate. These are always conducted with the utmost silence and secrecy” (Smith 1776, book 1, chap. 8).

Even then, Smith had observed an asymmetry not only in bargaining power, but also in capitalists’ response to workers’ attempts to redress the balance. When workers combine their forces, “the masters . . . never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers, and journeymen” (Smith 1776, book 1, chap. 8). This stance, of course, was markedly different from capitalists’ own behavior—not only in labor markets, but elsewhere, too. As Smith put it in one of his most famous statements, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices” (book 1, chap. 10). This issue is central: to redress the natural imbalance of bargaining power, workers have to band together and engage in collective bargaining. Unions are critical. But it is precisely because unions have been somewhat successful in redressing the imbalance that employers have worked so hard to suppress them, as I comment later in this introduction.

Contracts

In multiple contexts, business enterprises have not been satisfied with the increased profits brought by greater market concentration and occasional collusion. Businesses have figured out how to sustain and amplify those profits by the clever design of contracts that are conceived to inhibit competition in the labor market. This is another method that enables them to drive down wages still further.3 The chapters by Evan Starr and Terri Gerstein (this volume) provide ample evidence of the harmful impact of the misuse of labor contracts, noting in particular that often-used ruses distort the true impact on workers. Noncompete agreements, by definition, reduce competition. There might be some justification for not allowing employees with knowledge of trade secrets to go to work for competitors, but that hardly applies to employees of fast-food chains.

Employers have also put into contracts provisions that weaken workers’ rights—and power—if a dispute arises. Inserting arbitration clauses into most contracts has moved dispute resolution out of the public domain— where it can be protected in the public interest, through transparency and basic standards—into private hands. This not only weakens workers’ position after a dispute arises, but also subtly changes the balance of power— making it easier for firms to take advantage of workers, knowing that their ability to get redress is so circumscribed. Making matters worse is a broader set of changes in legal frameworks that has hurt workers and consumers at the expense of corporations. For instance, the ability to bring class-action lawsuits, particularly in arbitration, has been greatly limited.

Asymmetric Information

The standard competitive theory assumes perfect information. Research over the past 50 years has explained how even a little information asymmetry can have a large impact. Employers have recognized this—they have figured out that such asymmetry can weaken workers’ position and lead to lower wages. They have responded by doing what they can to increase these asymmetries, sharing data with each other but insisting that workers keep their own compensation data confidential, and punishing employees who violate such confidentiality. The chapter by Harris in this volume describes the adverse effects of informational asymmetries, how firms have tried to increase these asymmetries, and what governments have done and can still do to promote transparency—and thus competition—in the labor market.

#### The plan solves inequality and wages.

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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.

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

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

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

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

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

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

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

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

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

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One of the oldest theories of nationalism is that states instill the nationalist myth in their citizens to divert their attention from great economic inequality and so forestall pervasive unrest. Because the very concept of nationalism obscures the extent of inequality and is a potent tool for delegitimizing calls for redistribution, it is a perfect diversion, and states should be expected to engage in more nationalist mythmaking when inequality increases. The evidence presented by this study supports this theory: across the countries and over time, where economic inequality is greater, nationalist sentiments are substantially more widespread.

This result adds considerably to our understanding of nationalism. To date, many scholars have focused on the international environment as the principal source of threats that prompt states to generate nationalism; the importance of the domestic threat posed by economic inequality has been largely overlooked. However, at least in recent years, domestic inequality is a far more important stimulus for the generation of nationalist sentiments than the international context. Given that nuclear weapons—either their own or their allies’—rather than the mass army now serve as the primary defense of many countries against being overrun by their enemies, perhaps this is not surprising: nationalism-inspired mass mobilization is simply no longer as necessary for protection as it once was (see Mearsheimer 1990, 21; Posen 1993, 122–24).

Another important implication of the analyses presented above is that growing economic inequality may increase ethnic conflict. States may foment national pride to stem discontent with increasing inequality, but this pride can also lead to more hostility towards immigrants and minorities. Though pride in the nation is distinct from chauvinism and outgroup hostility, it is nevertheless closely related to these phenomena, and recent experimental research has shown that members of majority groups who express high levels of national pride can be nudged into intolerant and xenophobic responses quite easily (Li and Brewer 2004). This finding suggests that, by leading to the creation of more national pride, higher levels of inequality produce environments favorable to those who would inflame ethnic animosities.

Another and perhaps even more worrisome implication regards the likelihood of war. Nationalism is frequently suggested as a cause of war, and more national pride has been found to result in a much greater demand for national security even at the expense of civil liberties (Davis and Silver 2004, 36–37) as well as preferences for “a more militaristic foreign affairs posture and a more interventionist role in world politics” (Conover and Feldman 1987, 3). To the extent that these preferences influence policymaking, the growth in economic inequality over the last quarter century should be expected to lead to more aggressive foreign policies and more international conflict. If economic inequality prompts states to generate diversionary nationalism as the results presented above suggest, then rising inequality could make for a more dangerous world.

The results of this work also contribute to our still limited knowledge of the relationship between economic inequality and democratic politics. In particular, it helps explain the fact that, contrary to median-voter models of redistribution (e.g., Meltzer and Richard 1981), democracies with higher levels of inequality do not consistently respond with more redistribution (e.g., Bénabou 1996). Rather than allowing redistribution to be decided through the democratic process suggested by such models, this work suggests that states often respond to higher levels of inequality with more nationalism. Nationalism then works to divert attention from inequality, so many citizens neither realize the extent of inequality nor demand redistributive policies. By prompting states to promote nationalism, greater economic inequality removes the issue of redistribution from debate and therefore narrows the scope of democratic politics.

#### Labor market inequities create slow and unstable growth---COVID proves.

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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.

The COVID-19 crisis has provided a dramatic illustration: inequalities in income translate into inequalities in health, especially in a society, like that of the United States, that relies on markets to dispense healthcare. The virus is not an equal opportunity virus—it appears to have the most devastating effects on people who have underlying health conditions. Our health inequalities are undoubtedly one of the reasons that the United States led the world in COVID-19 deaths.

Short-sighted employers did not provide sick leave and government did not require it—even when Congress seemed to recognize that workers without sick leave, who live paycheck to paycheck with virtually no money in the bank, would go to work even when they were sick. They had to work in order to survive, but that meant they helped to spread the disease. After lobbying by the large corporations, Congress decided that employers with more than 500 employees—almost half of the private labor force— were exempt from providing sick leave. With so few workers unionized, employees simply did not have the bargaining power to demand paid sick leave, personal protective equipment, or COVID-19 tests. Government should have required all these things, of course, and it had the power to do so under OSHA, but chose not to. Workers were desperate for the protection, but lacked the bargaining power to get it.

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

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

Thank you Chair Beyer, Ranking Member Lee, and members of the Joint Economic Committee for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor Market Policy and the interim Chief Economist at the Washington Center for Equitable Growth. We seek to advance evidence-backed ideas and policies that promote strong, stable and broad-based growth. Core to this mission is understanding the ways in which inequality has distorted, subverted and obstructed economic growth in recent decades.

Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality and made the U.S. economy less efficient. Reversing the trends that have led to a “second gilded age” is critical to encouraging a resilient economic recovery following the pandemic-induced economic crisis of 2020 and encouraging a healthy, competitive economy for the future.

Introduction

The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market and demonstrated that a rising tide does not lift all boats. Furthermore, economic evidence demonstrates how inequality results in an inefficient allocation of talent and resources while increasing corporate concentration that enriches the few while holding back the entire economy from its potential. Understanding the causes and consequences of the concentration of corporate power will guide policymaking in order to ensure that the economic recovery in the next phase of the pandemic will be broadly shared and ensure a more resilient economy.

“Monopsony” is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of “monopoly,” but instead of having only one producer of a good or service, there is effectively only one buyer of a good or service, such as only one employer hiring people’s labor in a company town. Like in monopoly, this phenomenon is not limited to when a firm is strictly the only buyer of labor. Today I will explain the circumstances and effects of employers having significant monopsony power over the market and over workers.

When employers have outsized power in employment relationships, they are able to set wages for their workers, rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers. This means paying them less than the value they contribute to production. One recent survey of all the economic research on monopsony finds that, on average across studies, employers have the power to keep wages over one-third less than they would be in a perfectly competitive market. Put another way, in a theoretical competitive market, if an employer cut wages then all workers would quit. But in reality, these estimates are the equivalent of a firm cutting wages by 5 percent yet only losing 10 percent to 20 percent of their workers, thus growing their profits without significantly impacting their business.

It is not only important for workers to earn a fair share so they can support themselves and their families, but also critical to ensure that our economy rebuilds to be stronger and more resilient. Prior to the current public health crisis and resulting recession, earnings inequality had been growing since at least the 1980s while the labor share of national income has been declining in same period. This is cause for concern as recent evidence suggests that the labor share of income has a positive impact on GDP growth in the long-run.

The unprecedented economic shock caused by the coronavirus pandemic revealed how economic inequality leads to a fragile economy, where those with the least are hit the hardest, amplifying recessions since lower-income workers typically spend more of their income in the economy. But the crisis also demonstrated how economic policy targeted toward workers and families can provide a foundation for growth. This is because workers are the economy, and pushing back against the concentration corporate power by providing resources to workers is the foundation for strong, stable and broadly shared growth.

The Causes of Monopsony

The concept of monopsony was initially developed by the early 20th century economist Joan Robinson, who examined how lack of competition led to unfair and inefficient economic outcomes. The prototypical example of monopsony is a company town, where there is one very dominant employer and workers have no choice but to accept low wages since they have no outside options. This is the most extreme case, but it is important to note that firms have monopsony power in any circumstance where workers aren’t moving between jobs seamlessly in search of the highest wages they can get.

Firms can use monopsony power to lower workers’ wages any time workers:

* Have few potential employers
* Face job mobility constraints
* Can only gather imperfect information about employers and jobs
* Have divergent preferences for job attributes
* Lack the ability to bargain over those offers

I will go through each of these factors in turn and demonstrate how labor markets are unique compared to other markets in dealing with competitive forces.

While concentrated labor markets are not the norm, they are pervasive across the United States, especially within certain sectors or locations. When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing that their workers have nowhere to go to find a better job with better pay. (See Figure 1.)

A study published in the journal Labour Economics by economists Jose Azar, Ioana Marinescu, and Marshall Steinbaum finds that 60 percent of U.S. local labor markets are highly concentrated as defined by U.S. antitrust authorities’ 2010 horizontal merger guidelines. This accounts for 20 percent of employment in the United States. Research by economists Gregor Schubert, Anna Stansbury, and Bledi Tsaka goes further by estimating workers’ outside options, or the likelihood a worker is able to change into a different occupation or industry. This study finds that even with a more expansive definition of job opportunities more than 10 percent of the U.S. workforce is in local labor markets where pay is being suppressed by employer concentration by at least 2 percent, and a significant proportion of these workers facing few outside options are facing pay suppression of 5 percent or more. As study co-author Anna Stansbury noted, “for a typical full-time workers making $50,000 a year, a 2 percent pay reduction is equivalent to losing $1,000 per year and a 5 percent pay reduction is equivalent to losing $2,500 per year.”

Certain sectors are now very concentrated, such as the healthcare industry. In a paper by the economists Elena Prager and Matt Schmitt, they find that hospital mergers led to negative wage growth among skilled workers such as nurses or pharmacy workers. Consolidation and outsized employer power, alongside other phenomenon such as the fissuring of the workplace, may have broader impacts on the structure of the U.S. labor market when it affects the overall structure of the labor market, including the hollowing out of middle class jobs that have historically been a pathway for upward mobility.

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

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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.

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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.

#### Decline 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.

**Democratic Institutions---1AC**

**Advantage 2 is Democratic Institutions.**

**Congressional inaction shifts power to less democratic institutions.**

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

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

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

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

**Scenario 1 is the Courts.**

**Judicial antitrust legislating applies to broader common-law, undermining democratic legitimacy through precedent.**

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

3. Implications for Interpretation

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

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

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

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

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

**Democracy solves every impact by being comparatively more stable than autocracies.**

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

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

**The plan is key to reverse erroneous court judgement that distorted the purpose of antitrust law.**

Daniel Hanley 21. A policy analyst at the Open Markets Institute. "Slate - How Antitrust Lost Its Bite" Open Markets Institute. 4-21-2021. https://www.openmarketsinstitute.org/publications/slate-how-antitrust-lost-its-bite

Antitrust is about determining and allocating the rights, privileges, and duties of all economic actors. When Congress **originally enacted** the Sherman Act, the law was intended to protect **consumers**, **workers**, and **democracy** from excessive concentrations of corporate power. Because of this reality, it is an inherently political area of law. The shift toward rooting it in economics, and making its application substantially more obscure than a bright-line rule, is effectively a means by the **judiciary** to **strip** the historical foundations of antitrust from the record and instead substitute its **own judgment** on what the priorities are for the economy and how it should be structured.

When combined with the rule of reason, the judiciary’s **consumer welfare** framework effectively **erases Congress’ intent** for the antitrust laws to operate as a “comprehensive charter of **economic liberty**” that “does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers.” Such values are best determined by members of the elected legislature rather than **unelected judges**, a point ironically acknowledged by the Supreme Court in 1972.

**Lower** federal **courts** today continue to push the **c**onsumer **w**elfare **s**tandard even further by, in **violation** of controlling Supreme Court precedent, weighing the competitive harms of a dominant firm’s conduct against one group to the benefits provided to another group. In ongoing litigation against the NCAA that was heard by the Supreme Court last week, the district court judge ruled that the NCAA’s compact with universities to set a ceiling on the amount of compensation that student-athletes can receive is legal because of the reputed benefit consumers derive from watching athletes knowing there is a cap on their compensation. The court employed the rule of reason to arrive at this result. In an alternative enforcement regime, the NCAA would be a per se illegal employer cartel that is suppressing workers’ wages.

Comprehensive empirical analysis has revealed that the rule of reason has been a rubber stamp for even the most egregious antitrust conduct. A 2009 analysis revealed that 97 percent of cases analyzed under the rule of reason result in victories for defendants. That means corporations are effectively shielded from most antitrust violations.

Part of the reason for such a skewed result in favor of antitrust defendants is that dominant firms have access to high-salaried economists that are able to manipulate analyses to mask the corporation’s conduct to look like it is operationally efficient instead of engaging in predatory practices. Such a situation also deters antitrust litigation because a plaintiff will also have to incur the cost of an economist—which can cost several thousand dollars and, in some cases, several hundred thousand dollars. Thus, the battle over the legality of a business tactic under a consumer welfare framework and rule of reason legal analysis depends on access to immense **financial capital** and **judicial appeasement** of policies that favor **corporate integration** rather than common notions of fairness, equity, and deconcentrated markets—which was the **original purpose** of the antitrust laws.

Despite controlling Supreme Court precedent prohibiting the use of economics in certain antitrust violations, courts now routinely use it to justify corporate consolidation. For example, in the context of merger analysis, the **economization** of **antitrust** has led courts to believe and depend on theoretical assumptions on how mergers are beneficial for society and consumers. In the case of AT&T and its pursuit of acquiring Time Warner in 2018, the corporation stated its merger would produce efficiencies and save customers money. District Court Judge Richard Leon was persuaded by AT&T’s statements holding that vertical integration is able to shrink its costs and will “lead to lower prices for consumers.” But such assumptions have been categorically repudiated by researchers. In one example, the economist John Kwoka found that 80 percent of studied **mergers** led to **high prices** and even **reduced output**. Other studies have found equivalent results. In the context of AT&T, subsequent evidence showed that AT&T did raise prices on consumers.

As Congress considers enacting new legislation, it must start by **reclaiming control** over antitrust by enacting laws with **clear rules** that could **deter** exclusionary **conduct** and greatly **simplify** the **litigation** process for plaintiffs. Moreover, instead of just restoring many of the historical bright-line rules that the judiciary has eroded over the last 60 years, new laws should go further to ensure that markets remain deconcentrated and to promote economic fairness. For example, Congress could enact strict prohibitions on firms entering certain lines of business, such as AT&T being prohibited from entering the computer industry in 1956, or ban the use of specific competitive practices outright, such as **noncompetes** that **restrict** the mobility of **workers**. Rules like these ensure the markets are structured **by publicly accountable** institutions to incentivize socially beneficial corporate conduct, such as investments in research and development and product quality.

Importantly, rules-based laws would also ensure the judiciary is adhering to **Congress’ directive** to keep markets deconcentrated and acknowledge that the **judiciary** is **not a** reliable **safeguard** for smaller independent firms and workers who often do not have access to significant amounts of capital to litigate an antitrust lawsuit. In fact, in commonly applied rules for how judges interpret Congress’ laws, the judiciary views **ambiguity** as an **opportunity** to **fill** any legal **gaps** with its interpretation and ideology.

History has consistently shown that only **bright-line rules** will lead to an **effective** and vigorous enforcement environment, as they do in other areas of law, and **prevent** the **judiciary** from favoring dominant economic enterprises and **distorting** the **antitrust** laws to preference increased concentration. The Supreme Court’s original development of the rule of reason and its subsequent gutting of the enforcement of the Clayton Act in the 1930s is particularly illustrative of why bright-line rules are necessary.

#### Scenario 2 is the FTC

#### Khan will use the FTC to push new standards---that will fail unless Congress rewrites the CWS.

Bhaskar Chakravorti 7/7/21. Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. "Lina Khan Has Her Own Antitrust Paradox". Foreign Policy. 7-7-2021. https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

A poisoned chalice is not the most welcoming of gifts for a new chair of a major federal agency. But that is what legal scholar Lina Khan has been handed as she arrives at her office at the Federal Trade Commission (FTC), with media coverage more befitting a rock star than a regulator. She is breathlessly described as a legal wunderkind and her “Amazon’s Antitrust Paradox” may already be the most widely talked about note in the history of the Yale Law Journal. Even Sen. Ted Cruz said he looks forward to working with her—and you know that puts her in an extremely select club. The clock is ticking on her very first assignment—to refile an antitrust complaint against Facebook and convince a federal judge to reconsider a complaint he so expeditiously threw out. Khan has under 30 days.

The best thing Khan can do? Nothing.

Congress ought to make the next move and do the responsible thing by getting its act together and reaching an agreement over a slate of bills it has been bickering over, creating a modern regulatory infrastructure for today’s tech. U.S. lawmakers ought to stop cheering Khan from the sidelines and egging her into a legal skirmish. Instead, they need to do the hard work of taking the longer view—bringing antitrust law to the digital age before refiling another complaint. Unless our lawmakers create the right framework and agency responsible for regulating the digital industry, Khan’s FTC—and U.S. consumers—will be drawn into near-term battles while the actual war rages on.

Here is the plot so far and what must be done.

The Facebook antitrust rewrite Khan is being pushed into is fraught with problems. The FTC, under the previous administration, rushed through a lawsuit against Facebook in December 2020, alleging the company’s acquisitions of Instagram and WhatsApp were anti-competitive. Regardless of the merits or demerits of Facebook’s purchases, a federal judge did not buy it. He did offer a 30-day period for revising and refiling.

To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have argued the agency just needs to be more explicit about its definition of the market and the data it is relying on.

It is useful to recall that, as the judge threw out the complaint, he also ruled that “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case.

Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to 60 percent when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned study found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are not regularly reported. No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.

One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to play fast and loose with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing standard for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in intrusive or abusive ways? Ultimately, the FTC and the courts would have decide if customers are getting a good value in exchange for their data.

Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has argued that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition.

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

#### That decimates the FTC---losses threaten the institution.

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 and privacy violation---it’s a prerequisite to all reforms.

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

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

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

IV. Conclusion

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

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

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

#### 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.

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

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

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

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

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

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

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

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

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

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

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

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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:

**Plan---1AC**

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

**Solvency---1AC**

**Advantage 3 is Solvency.**

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

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

Introduction

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

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

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

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

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

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

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

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

#### 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.

#### Now is key---COVID creates an economic brink.

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.

#### Chair Khan is advocating for the AFF but constrained by the existing body of antitrust law---only adopting a new standard solves.

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

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

# 2AC---R4---Harvard

### Inequality---OV

### Democratic Institutions---OV

### Turn

#### 2---The FTC’s ramping up antitrust enforcement now beyond the scope of existing antitrust law

Caitlin Styrsky 8/17/21. Staff writer at Ballotpedia. “Checks and Balances: FTC expands interpretation of its antitrust enforcement authority.” https://news.ballotpedia.org/2021/08/17/checks-and-balances-ftc-expands-interpretation-of-its-antitrust-enforcement-authority/

The Federal Trade Commission (FTC) on July 1 voted 3-2 to broaden its interpretation of the commission’s Section 5 authority, which authorizes the FTC to investigate and challenge what it deems “unfair methods of competition in or affecting commerce.” The change could allow the agency to expand enforcement proceedings against companies that don’t expressly violate federal antitrust statutes.

The new interpretation departs from the commission’s 2015 precedent, established through internal guidance, that relied on the consumer welfare standard to determine what constitutes antitrust activity. According to the consumer welfare standard, only companies that artificially raise prices qualify as monopolies for the purposes of FTC enforcement. The FTC did not pursue companies via this standard if enforcement through the Sherman Act or the Clayton Act could address the competitive harm.

Under the FTC’s broadened interpretation of its authority, the commission can issue civil penalties to challenge what it deems to be anti-competitive behavior regardless of whether the behavior violates federal antitrust statutes. The change could allow the FTC to bring enforcement proceedings against tech companies that do not qualify as monopolies but that, in the opinion of FTC Chair Lina Khan, have been alleged to have exhibited anti-competitive practices.

“Withdrawing the 2015 Statement is only the start of our efforts to clarify the meaning of Section 5 and apply it to today’s markets,” wrote Khan in a statement. “Section 5 is one of the Commission’s core statutory authorities in competition cases; it is a critical tool that the agency can and must utilize in fulfilling its congressional mandate to condemn unfair methods of competition.”

#### 3---Losers lose---defeats crush authority and demoralize staff.

David Mclaughlin 21. Reporter @ Bloomberg "Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts". Bloomberg. 6-23-2021. https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

### 2AC---T-Per Se---NU---TL

#### 1---We meet:

#### A---the plan prohibits activity.

Leon B. Greenfield, et al. 20. Perry A. Lange & Nicole Callan, Antitrust Populism and theConsumer Welfare Standard: What Are We Actually Debating?, 83 Antitrust L.J. 393(2020).

1. Public Interest Considerations in Merger Review

Under a "public interest" standard, mergers could be prohibited for reasons going beyond competitive harm, such as reduced wages, job cuts, or harm to small business. Critics of a public interest test argue that it would unconstructively inject social and political concerns into enforcement. For example, Di-ana Moss of the American Antitrust Institute (which generally advocates for aggressive antitrust enforcement) has warned that a public interest standard would introduce uncertainty into the antitrust laws and "could include every-thing that is affected by a merger or abusive conduct: employment, health and safety, and even environmental concerns."168

#### C----the aff bans worker corollaries to consumer welfare violations

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

Antitrust law helps workers and increases output by penalizing firms that use anticompetitive methods—above all, firms that concentrate labor markets by merging and firms that collude with each other by entering no-poaching agreements and the like. The law thus raises residual supply elasticity—or, in other words, competition—which forces employers to bid up wages toward the competitive level. Antitrust law does not directly regulate wages, of course; wages increase as a result of the penalizing of anticompetitive behavior. Nor does antitrust law offset the distortions introduced into labor markets by labor monopsony—in the way that certain fiscal and related policies can, as we will see. Let us now turn to other policy tools that can be used to counter labor monopsony.

#### 2---Counterinterpretation---Prohibition includes per se and rule of reason.

Anu Bradford and Adam S. Chilton 18. Anu Bradford Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton. Assistant Professor of Law and Walter Mander Research Scholar.

Before discussing our data and the coding of the CLI, it is important to recognize that there are limitations to any index that attempts to quantify competition regulation. This is because it is difficult to produce a single metric that tells the comprehensive story of country’s competition regime. For example, if a specific type of conduct is prohibited, is it prohibited always (per se) or sometimes (rule of reason)? This seems like a relevant distinction to code, but it turns out to be difficult to capture systematically in many jurisdictions. For instance, Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) seems to regulate anticompetitive agreements under the rule of reason standard in the European Union, but, in practice, cartels are per se prohibited. This highlights the challenge of coding even just the law in books, let alone accounting for all the nuances of a country’s competition policies.20

#### Practices---Any competition distortion---includes per se or rule of reason.

Charlotte Wezi Mesikano-Malonda 16. Executive director. "Global Competition Review". No Publication. 7-22-2016. https://globalcompetitionreview.com/review/the-european-middle-eastern-and-african-antitrust-review/the-european-middle-eastern-and-african-antitrust-review-2017/article/malawi-competition-and-fair-trading-commission

Anticompetitive business practices are generally defined as the category of agreements, decisions and concerted practices that result in the prevention, restriction or distortion of either actual or potential competition. Abuse of dominance and market power is an example of anticompetitive business practices and hence falls within the purview of the CFTA.3 Anticompetitive business practices are either illegal per se or illegal by rule of reason. A conduct is illegal per se if, regardless of its objective and effect or any justifications of the conduct, there is a presumption of harm on competition.

### 2AC---Antitrust PIC---TL

#### 1---Fails for both advantages

#### 2---Links to the net benefit---antitrust is the less stringent option.

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

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

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

**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.

#### 6---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.

### 2AC---States---TL

#### 1---State labor actions get pre-empted under the NLRA---thousands of empirics.

Moshe **Marvit 17**. attorney and fellow at the Century Foundation, and co-author with Richard D. Kahlenberg of Why Labor Organizing Should Be a Civil Right: Rebuilding a Middle-Class Democracy by Enhancing Worker Voice. “The Way Forward for Labor Is Through the States.” The American Prospect. 9/1/2017. <https://prospect.org/labor/way-forward-labor-states/>

While reforms to federal law have been blocked by Congress, states and cities have faced a different hurdle: the courts. Starting in 1959, **the Supreme Court has written into the National Labor Relations Act (NLRA) a continually expanding preemption doctrine that prevents states and cities from passing laws that touch upon anything related to labor**, involve the interpretation of a collective bargaining agreement, or even involve issues that the courts believe Congress intended to leave to the free play of market forces. Congress can, and often does, expressly preempt states from passing laws that fall within a defined scope. Neither the NLRA nor its extensive legislative history, however, contains any mention of preemption: Congress did not expressly preempt states from acting. **In instances where Congress has not expressly preempted states from acting, state laws that actually conflict with federal laws are still preempted**. However, neither the NLRA nor its legislative history show any consensus that Congress meant to push states and cities from making laws that advanced, and do not conflict with, the pro-collective-bargaining policies of the NLRA. And yet, as Harvard Law Professor Ben Sachs has pointed out, the Supreme Court has not employed the typical typologies of preemption at all when dealing with labor law. Rather, it has created a preemption doctrine [that] is among the broadest and most robust in federal law. In most other areas of worker protection, from minimum wage to antidiscrimination laws, the federal government has set the floor under which states and cities may not go, but they can and often do raise the ceiling by increasing state or local minimum wage or including additional protected categories such as sexual orientation to existing protections. Indeed, the evolution of many of the nation's employment and civil rights protections began at the state level and trickled up to the federal government. It is only in the area of workers' labor rights that states and cities are powerless to act and that, solely as the result of judicial decisions. The Supreme Court's preemption doctrine started with the 1959 case, San Diego Building Trades v. Garmon, where the employer got a state court injunction against the union for picketing. The Supreme Court should have held that the picketing that the union was engaged in was a protected right under federal labor law, and therefore the state could not pass a law that conflicts with that right. Instead, the Court went further and held that Congress gave the National Labor Relations Board primary agency jurisdiction, and so when something is arguably protected or prohibited by the NLRA, then only the Board can act. Furthermore, only the Board can answer the initial question of whether conduct is arguably under the Board’s jurisdiction. The Supreme Court then doubled down on its preemption doctrine in the 1976 case, Machinists v. Wisconsin Employment Relations Commission. In the Machinist case, an employer brought an unfair labor practice charge against union workers who engaged in concerted refusal to work overtime during contract negotiations. The NLRB dismissed the charge because it held that the work refusal was not prohibited under the NLRA, so the employer brought a state court action against the union. In response, the Supreme Court expanded its earlier Garmon preemption to hold that Congress intended that certain conduct be left unregulated and left to be controlled by the free play of economic forces. Though the union in the Machinists case benefitted from the Court’s expansion of federal preemption, the decision has led to states and cities being almost absolutely prohibited from passing laws that promote unionization and collective bargaining. These Court decisions, and **thousands of lower court decisions that have followed the precedent in overturning state and local laws,** rely on three types of specious and archaic reasons that deserve challenge and reconsideration. First, the Court has repeatedly shown a strong reliance on the state of the economy and labor force during the time when these decisions were issued. In the Machinists case, the Court described how it experimented with various types of preemption before settling on the broad form begun by Garmon, stating, as it was, in short, experience, not pure logic, which initially taught that each of these methods sacrificed important federal interests in a uniform law of labor relations. The experience the Court referred to was that of the late 1940s and 1950s, when union membership was at its peak. Whatever balance between labor and management that may have existed then has since eroded. Second, the Court has long interpreted the statute to require a uniform labor law across the country, and yet, labor law has become in many ways a crazy quilt, varying from region to region, from state to state, and from one president to the next. The NLRB has become a highly politicized agency, with its decisions swinging wildly every time a new president appoints new members and a general counsel. Cases that proceed through the National Labor Relations Board are often appealed to federal courts, and different federal circuits often come to opposite conclusions, meaning that the laws in different states effectively differ though it is the courts, not state or local governments, that create those differences. Further, the expansion of state right to work laws, as well as a variety of state public sector labor laws have also undermined any goal of national uniformity in labor law. Lastly, the Court's determination that Congress intended to leave a wide variety of conduct to the free play of economic forces has, in the words of NYU Law Professor Cynthia Estlund, done what Congress did not do in the NLRA, or even with the Taft-Hartley Act: It has granted to employers a federal right to use their economic power against unions. The Congress that passed the NLRA may have intended to ensure a balance between employer and union power, but there is no indication that it intended employers to be able to use the Act to evade any regulation in broad areas through a laissez faire argument. The result of this judicially created broad preemption has been to limit state and local experimentation in line with what Justice Brandeis described as laboratories of democracy with labor laws that advance the stated purpose of federal labor law. However, since states and cities cannot act in the field of labor law, all discussions of federal labor law reform are purely theoretical and lack any empirical basis for their possible effects. Numerous labor law scholars have written critically over the years of the rationale for such broad preemption, as well as the effects it has had on workers' ability to organize. Recently, Lewis & Clark Law Professor Henry Drummonds came up with a list of ten potential reforms that would advance the pro-collective bargaining mission of the NLRA if states could be able to pass such reforms under normal preemption rules. These include allowing states to: increase damages for violating workers' labor rights so the penalties are in line with those for other forms of workplace discrimination; experiment with restrictions on permanent replacement of striking workers and on the use of employer lockouts; experiment with â€œcard checkâ€ recognition of the union; provide equal access to union advocates as well as employers during a campaign for unions; and require arbitration if an impasse arises in the bargaining over a first contract. **The one and only major state labor reform since** the **1935** enactment of the NLRA has had a profound effect on the division of wealth and power in the United States. That, of course, **was the provision of the 1947 Taft-Hartley Act enabling states to pass right to work laws.** Allowing states and cities to create local rules that promote unionization and collective bargaining that are tailored to local needs and local industries could prove just as significant in the opposite direction.

#### Congress independently strips funding and authority from the FTC.

J. Howard Beales 03. Former Director, Bureau of Consumer Protection. “The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection.” https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection

The breadth, overreaching, and lack of focus in the FTC's ambitious rulemaking agenda outraged many in business, Congress, and the media . Even the Washington Post editorialized that the FTC had become the "National Nanny."(16) Most significantly, these concerns reverberated in Congress. At one point, Congress refused to provide the necessary funding, and simply shut down the FTC for several days. Entire industries sought exemption from FTC jurisdiction, fortunately without success. Eventually, Congress acted to restrict the FTC's authority, including legislation preventing the FTC from using unfairness in new rulemakings to restrict advertising.(17) So great were the concerns that Congress did not reauthorize the FTC for fourteen years. Thus chastened, the Commission abandoned most of its rulemaking initiatives, and began to re-examine unfairness to develop a focused, injury-based test to evaluate practices that were allegedly unfair.

### 2AC---Offsets CP---TL

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

Without reference to the laws of the United States, the United States federal government should determine that private sector business practices that violate a ~~workers welfare~~ standard constitutes an unlawful restraint on trade and commerce~~. The United States Congress should restrict the scope of its core antitrust laws to exclude an antitrust workers welfare standard.~~

#### 6---Zero chance of solving warming.

C.J. Atkins 21 – the managing editor at People's World, holds a Ph.D. in political science from York University in Toronto, 8/9/21. “Already too late: IPCC report says global warming consequences now unavoidable.” https://peoplesworld.org/article/already-too-late-ipcc-report-says-global-warming-consequences-now-unavoidable/

It’s too late to reverse the massive damage humanity has done to the Earth’s climate, and deadly weather is already baked into our future. That’s the conclusion from a depressing new report issued Monday morning by the Intergovernmental Panel on Climate Change, a United Nations body that forecasts the effects of human activity on the climate.

The grim assessment was confirmed by Linda Mearns, senior climate scientist at the U.S. National Center for Atmospheric Research. “It’s just guaranteed that it’s going to get worse,” she told the press. “Nowhere to run, nowhere to hide.”

The IPCC’s latest report—its sixth—estimates that Earth has gotten so warm to date that the planet’s temperature will likely race past the restrictions the Paris Climate Accord had recommended. That agreement set a goal of limiting the average global temperature increase to 1.5 degrees Celsius above pre-industrial levels in order to prevent irreversible climate damage.

Essentially, the IPCC says stopping that from happening is now impossible; Earth will hit the Paris agreement’s redline by 2040, perhaps sooner. And it will probably blow through a 2 degrees Celsius rise sometime by 2100.

The inescapable reality communicated by the report is that we are already living through the effects of climate change—they’re not something looming in the future. Also, it is clear that current emissions pledges made by governments are nowhere near enough and that big business isn’t going to lead the way toward change.

The IPCC doesn’t pander to any climate denialism, stating that it is “unequivocal” that human activity is responsible for the crisis we face. “Many changes due to past and future greenhouse gas emissions are irreversible for centuries to millennia,” the authors write. That means there’s no way to avoid some of the consequences brought on by uncontrolled environmental abuse over the last couple hundred years.

The scientists behind the report list all the evidence we’re already seeing around the globe: extreme heatwaves, flood-inducing precipitation in many areas, extended droughts in others, violent tropical cyclones and hurricanes, the disappearance of sea ice and snow cover, and the melting of permafrost.

The vanishing of Arctic sea ice is a particularly dire indicator of the trouble we’re in. Ice levels in the region vary throughout the year, but summertime retreats are now at their lowest levels in a thousand years. Even in its most optimistic scenario, the IPCC says the ice will disappear during summer at least once between now and 2050. This melting creates a feedback loop: Ice cover reflects solar radiation back outward, but darker bare water absorbs it, causing further warming.

All of these trends will get unavoidably worse, and the 3,000-plus-page report doesn’t rule out the catastrophic possibilities of a total collapse of the Arctic ice sheet or abrupt changes in the circulation of ocean waters—events which would trigger rapid and massive swings in global weather. Regardless, the world is already “locked in” to between 6 and 12 inches of sea level rise over the next 25 years.

**Econ DA---2AC**

**Inequality inevitably collapses the economy---only major policy changes solve.**

Safa **Motesharrei 14**. \* Applied Mathematician and Systems Scientist at the University of Maryland. Ph.D., Applied Mathematics. Ph.D., Public Policy and Physics. \*Jorge Rivas, political scientist at the University of Minnesota. \*Eugenia Kalnay, Distinguished University Professor of Atmospheric and Oceanic Science at the University of Maryland. "Human and nature dynamics (HANDY): Modeling inequality and use of resources in the collapse or sustainability of societies". Ecological Economics. May 2014. https://www.sciencedirect.com/science/article/pii/S0921800914000615

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

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

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

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

**5---Increasing worker welfare strengthens innovation.**

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---Gaps in the CW enforcement reduce innovation.**

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Michael Luca and Timothy Wu show how a **vertically integrated** platform can decrease an edge rival's usage, a potential proxy for **harm** to **edge innovation**. 29 In a paper funded by Yelp and coauthored with Yelp's data scientists, the authors demonstrated that Google deviated from its organic search results to favor its own local web properties in a search for caf6s in Louisville." The European Union has advanced a similar theory, accusing Google in 2015 of diverting traffic from competitive rivals toward its own comparison-shopping site.' When Google was induced to revert back to its organic search results, the rankings of competing independent properties were elevated in Google's search, and users were 40% more likely to engage with the search results, as measured by click activity.3 2 To the extent that fewer clicks means fewer matches between buyers and sellers on the internet, and fewer consummated transactions, Google's favoritism of its own local web properties is consistent with an **output reduction**. And **antitrust** generally **condemns** conduct of a firm with market power that **restricts output** or leads to higher prices without any efficiency justification.

Another piece of evidence linking platform power to innovation comes via a study of the mobile app market by Professors Wen Wen and Feng Zhu.3 3 The authors find that after Google's **entry threat** into a specific app space increases, developers susceptible to Google's entry threat **reduce innovation** (as measured by software updates) and raise the prices for the affected apps.3 4 The authors measure both the innovation effects and price effects relative to apps in the same category that are unaffected by Google's entry threat.15 After Google's entry, software updates are further reduced, and prices further increased.36 Specifically, prior to Google's entry, the "affected developer reduces his updates on an affected app by 5 percent" and "increase[s] the prices of affected apps by 1.8 percent when the entry threat increases."" Once Google enters, the affected developer "reduces updates on the affected app by 8 percent" and "increase[s] the prices of affected apps ... by 3.6 percent," consistent with entry accommodation. 38

The authors conclude that, when app developers are "threatened by the platform owner, they do not stop investing and innovating; rather, they **shift innovation** effort from affected markets to unaffected markets."39 They further conclude that "Google's entry threats and actual entry [can] **discourage** further **investment** in developing duplicative features [yet] encourage app developers to introduce more new apps in other markets" by creating incentives to design around the platform owner. 40 The study therefore illustrates the potential for the **CW standard**'s focus on price effects to generate false positives: seizing on higher app prices might **miss** the potential for increases in **innovation** and variety. Even the short-run price effects that the authors observe may be endogenous, assuming that Google's entry is a signal for app quality and that app prices are correlated with their quality. Their findings also highlight the potential for the **CW standard**, through its focus on output effects, to generate **false negatives**: if independents are merely displaced into new app spaces by discriminatory treatment such that total short-run output is unfazed, intervention is unwarranted under the CW standard even though a platform provider has altered the trajectory of innovation, **potentially dampening** the **incentives** for future edge **innovation**. Traditional antitrust enforcement, at least under the **CW** standard, **could not** do this **balancing**; Congress would need to make a balancing decision and set the rules.

**Antitrust law is needed to solve labor monopsony’s economic harms.**

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Labor monopsony is regulated by the antitrust laws, just as the more familiar phenomenon of monopoly is. Indeed, from an economic standpoint, monopolization of product markets and **monopsonization of labor markets** pose exactly the same challenge to the economy—mispricing of resources (material or human), resulting in their underemployment, which both **harms the economy and results in inequitable outcomes**. Because nominally **antitrust law applies to monopsony** as well as to monopoly,18 one might think there would be as much litigation against employers for labor-market monopsonization as there has been against firms for violating antitrust law in the product market. But the opposite is the case. The **antitrust laws have rarely been used against employers** by private litigants or the government.19 And when they have been used—whether by private litigants or by the government—they have been used mostly against the most obvious forms of anticompetitive conduct, like no-poaching agreements.20 Much under-the- radar activity **has been unaddressed.**

**2---Big Tech isn’t innovative, it’s replacing innovative startups.**

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

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

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

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

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

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

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

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

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

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

**3---Expanding antitrust law won’t allow China to rise.**

Shira **Ovide 21**. Shira writes the On Tech newsletter, a guide to how technology is reshaping our lives and world. "China Isn’t the Issue. Big Tech Is." New York Times. 6-17-2021. https://www.nytimes.com/2021/06/17/technology/china-big-tech.html

We need to have a vigorous debate about what Americans might gain or lose if government officials succeed in forcing changes to technology services and companies as we know them.

One thing that’s standing in the way of such a debate is fearmongering by tech companies and their allies. They tend to decry anything that might alter how Big Tech operates as somehow helping China win the future. It’s an intellectually dishonest tactic and a distraction from important questions about our future. It bugs the heck out of me.

What prompted my eye rolling was how tech companies have responded to a recent flurry of activity that could profoundly alter life for America’s tech superstars, and all of us who are affected by their products. Several Democrats in Congress have proposed new laws to crack down on big technology companies. And the new chair of the Federal Trade Commission, Lina Khan, has advocated for aggressive enforcement of monopoly laws to stop what she sees as big tech companies preying on consumers.

Those steps could unravel the status quo in technology, or not. We’re in a messy phase that makes it tricky to predict what Congress, states, courts and government enforcers might do to change the rules for tech companies — and whether it will do more good than harm.

But powerful corporations and people who support them aren’t grappling with the nuances. Publicly at least, they have responded as they often do, by essentially implying that **guardrails** on some U.S. technology companies create the conditions for **China** to take over the world. Somehow. Don’t ask how.

Here’s what an official at NetChoice, a group that represents Google, Facebook and Amazon, told The Washington Post about the crop of Big Tech regulation bills: “At the same time Congress is looking to boost American innovation and cybersecurity, lawmakers should not pass legislation that would cede ground to foreign competitors and open up American data to dangerous and untrustworthy actors.”

And this is what the Information Technology and Innovation Foundation, a policy group that gets funding from telecommunications and tech companies, said this week about the appointment of Khan as F.T.C. chair: “In a time of increased global competition, antitrust populism will cause lasting self-inflicted damage that benefits foreign, less meritorious rivals.”

Sounds bad! You might notice that these statements don’t name **China**, which is the **magic word** to make stuff happen in **Washington**. But that’s what they mean by referencing unnamed foreign rivals.

Yes, it’s reasonable for Americans to want strong U.S. companies in a competitive global economy. But making a handful of tech kings **play fair** **isn’t likely** to **break them**.

As for the security arguments, the logic doesn’t work if you think about it for more than two seconds. Does preventing Amazon from selling its own brand of batteries — as one congressional bill might do — hold America back from fighting foreign cyberattacks? **Nope**. How do proposals that might restrain giant companies from doing whatever they want with our personal information **weaken America** on the world stage? **They do not**.

There are absolutely legitimate concerns about China shaping global technology or online conversations in ways that clash with America’s values and interests. It’s right to be concerned about China’s participation in swiping America’s secrets. That has almost **nothing to do** with whether Americans would be better off if **Facebook** were prohibited from buying the next Instagram or whether **Apple** shouldn’t be able to give a leg up to its fitness and music services on iPhones.

**Restraining U.S. corporate powers** from enriching themselves at the expense of Americans **doesn’t weaken** the **country**’s ability to restrain abuses by China or support competitive U.S. companies. We can do all of it.

**Inequality reduces growth.**

**OECD 18**. “HOW CAN COMPETITION CONTRIBUTE TO FAIRER SOCIETIES?” Organisation for Economic Cooperation and Development. 11-29-18. https://one.oecd.org/document/DAF/COMP/GF(2018)13/en/pdf

35. Growing **inequality reduces economic growth**. Financial hardship and credit market imperfections combine to **reduce people's ability to invest** in education and training, to change jobs, to learn new skills or start new businesses. Inequality harms the morale and the work effort of those who are left behind. It also leads to an **inefficient provision of public goods** that benefit the non-wealthy, like transportation and education even if they would foster overall economic growth. Growing inequality tilts public policy to favour the interests of the wealthy, which potentially creates a **vicious public policy cycle that could perpetuate inequality** and market power and threaten democracy. Inequality undermines the legitimacy of the social order, it lessens the sense that everyone has a fair opportunity and an equal voice, and finally many people would say inequality is objectionable morally. Put in utility terms, the marginal dollar may be more valuable socially if it is given to a struggling family to spend than to a wealthy one. There is a wealth transfer from the victims of market power to the firms exercising it. There are allocative efficiency losses and there is wasteful rent seeking as firms invest to create, obtain or preserve market power. Within the markets that are affected by market power, **innovation and productivity improvements slow.**

### 2AC---Infrastructure

#### COVID proves all global climate change action fails---Biden ensures complacency and no incentive for collective action.

Bordoff ‘20Jason, March 27, 2020, former senior director on the staff of the U.S. National Security Council and special assistant to President Barack Obama, is a professor of professional practice in international and public affairs and the founding director of the Center on Global Energy Policy at Columbia University’s School of International and Public Affairs.

"Sorry, but the Virus Shows Why There Won't Be Global Action on Climate Change," Foreign Policy, <https://foreignpolicy.com/2020/03/27/coronavirus-pandemic-shows-why-no-global-progress-on-climate-change/>

In reality, COVID-19 reveals three reasons why fighting climate change is so hard. First, stopping the spread of this highly contagious disease requires that we all upend our daily lives in dramatic ways—and often do so for the benefit of others. Saving lives and sparing our medical system from becoming overwhelmed requires slowing the pace of the disease’s spread. Doing that, in turn, requires a range of public health measures including avoiding contact with others, especially since those carrying the virus may not even know they have it. Many young and healthy people should be able to recover from COVID-19, but “social distancing” is necessary to help others avoid contracting the disease, particularly the elderly or those with underlying medical conditions. In other words, “flattening the curve” of the pandemic is a classic collective action problem. Some people will choose to self-isolate to be responsible and help others, but if most others don’t do the same, there will be little benefit from that sacrifice to slow the disease’s spread. On the other hand, if everyone else self-isolates, a low-risk individual might choose to “free ride” on those sacrifices by continuing to live life as normal. Indeed, this behavior has been pervasive during the pandemic, undermining efforts to slow the spread. Despite the public health warnings, bars and restaurants remained full in major cities like [New York](https://ny.eater.com/2020/3/15/21180368/coronavirus-nyc-restaurant-bar-shutdown-pressure), beaches in Florida remained [crowded](https://www.nbcnews.com/news/us-news/florida-governor-refuses-shut-down-beaches-amid-spread-coronavirus-n1162226), and [revelers](https://time.com/5804089/us-coronavirus-social-distancing-party/) in many other places around the world continued to ignore official orders to avoid congregating. “If I get corona, I get corona,” as one spring break student in Miami nonchalantly [put](https://twitter.com/CBSNews/status/1240371160078000128?s=20) it. Like COVID-19, climate change is the ultimate collective action problem. Each ton of greenhouse gas contributes equally to the problem, no matter where in the world it is produced. The United States contributes 15 percent of emissions each year; Europe, a meager 9 percent. Lawmakers in Brussels may choose to impose an economic cost on Europeans by ratcheting up the pace of decarbonization, but there will be little benefit in avoided climate impacts unless others around the world do the same. The global nature of climate change should rally nations to do even more to address it because they want others to follow. When the Obama administration was developing an estimate for the harm to society from carbon emissions, for example, it [chose](https://blogs.wsj.com/experts/2017/11/15/trump-vs-obama-on-the-social-cost-of-carbon-and-why-it-matters/) to use the global rather than domestic estimate of damage precisely for this reason. Because carbon dioxide impacts are global, and every ton of CO2 contributes equally to climate change, if all nations looked only at the impact of a ton of CO2 on their own nations, the collective response would be vastly inadequate to address the true damage from climate change. Unfortunately, too often the need for collective action is an excuse for inaction. House Republicans often [argue](https://www.popsci.com/china-us-climate-greenhouse-emissions/) that if China won’t commit to major emissions reductions, neither should the United States. As U.S. Sen. Lamar Alexander recently [put](https://www.alexander.senate.gov/public/index.cfm/2019/3/alexander-offers-one-republican-s-response-to-climate-change) it, “When it comes to climate change, China, India, and developing countries are the problem.” To slow the spread of COVID-19, governments are clamping down to force collective action when individuals fail to follow guidelines. Cities across the world are shutting down businesses and events, at great cost. Yet the effectiveness of any one government’s action is limited if there are weak links in the global effort to curb the pandemic—such as from states with conflict or poor governance—even if the world is in agreement that eradicating a pandemic is in every country’s best interest. Climate change is even harder to solve because it results from the sum of all greenhouse gas emissions and thus requires aggregate effort, a problem particularly vulnerable to free-riding, as my Columbia University colleague Scott Barrett explains in his excellent [book](https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199211890.001.0001/acprof-9780199211890) Why Cooperate? The Incentive to Supply Global Public Goods. And whereas governments can force people to stay home, there is no global institution with the enforcement power to require that nations curb emissions. Even if the young and healthy are unpersuaded by appeals to the greater good, they should still avoid crowded beaches and bars because of the high degree of uncertainty about COVID-19, which may [impact](https://www.washingtonpost.com/health/2020/03/19/younger-adults-are-large-percentage-coronavirus-hospitalizations-united-states-according-new-cdc-data/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most) young people more than previously thought. Practicing social distancing not only helps others but is a risk mitigation strategy for oneself. Similarly, taking climate change action, even by countries less at risk than others, is a risk mitigation strategy because of the high degree of [uncertainty](https://www.nytimes.com/2013/10/11/opinion/inconvenient-uncertainties.html) over how severe the impacts of climate change will end up being—the so-called “of climate risk. The second sobering lesson from COVID-19 for climate change efforts is the importance of public buy-in and education. The problems of collective action described above are less acute when the public broadly understands the gravity of the threat. After suffering from failed responses to previous disease outbreaks, several Asian countries learned their lessons and have responded to COVID-19 far more rapidly than the United States and those in Europe. Residents of Hong Kong, for example, which suffered during the SARS epidemic, [canceled](https://www.washingtonpost.com/world/asia_pacific/how-the-us-can-defeat-coronavirus-heed-asias-lessons-from-epidemics-past/2020/03/18/9aa7916a-67a5-11ea-b199-3a9799c54512_story.html) gatherings and practiced social distancing before the government even ordered it because they understood the risks. While public concern with climate change is rising, there remains a long way to go. Only [half](https://www.nytimes.com/interactive/2020/02/20/climate/climate-change-polls.html) of Americans believe climate change should be a top priority for the federal government, and the figure is far lower on the Republican side of the aisle. Indeed, COVID-19 itself may actually erode public support for stronger climate action, as the pace of climate ambition wanes during times of economic hardship. Historically, there is an inverse [relationship](https://www.p-plus.nl/resources/articlefiles/geloofopwarming.pdf) in the United States and Europe between public concern about the environment and worries about economic conditions. Similarly, concern about economic growth has often caused China to ratchet back its environmental ambitions. Just last week, China was [reportedly](https://www.bloomberg.com/news/articles/2020-03-18/china-may-help-struggling-carmakers-by-relaxing-emission-curbs?sref=uFaJcogC) considering relaxing emissions standards to help struggling automakers. The third reason COVID-19 should give pause to expectations about climate change action is because of what it reveals about the strong link between carbon emissions and economic activity. For decades, the energy intensity, and thus carbon intensity, of economic growth has declined, as economies become more energy-efficient. Each unit of economic growth contributes less to carbon emissions than it previously did. From 2014 to 2016, global greenhouse gas emissions did not rise at all, leading many to celebrate that emissions and economic growth had decoupled. Yet there remained a strong relationship between growth and energy use. As Harvard’s Robert Stavins [pointed](https://www.pbs.org/newshour/economy/column-dont-be-fooled-co2-emissions-still-tied-to-economic-growth) out, the rate of gross domestic product growth still very much affects emissions, as slower growth would have led emissions to fall. As COVID-19 brings the global economy to a standstill, economists [worry](https://www.reuters.com/article/uk-health-coronavirus-stocks-economy-usa/d-word-rears-head-as-coronavirus-hit-markets-brace-for-recession-idUSKBN2140IA) about not just a recession, but even a global depression. In the United States alone, a record 3.3 million workers filed for unemployment benefits last week, a number likely to rise sharply. On the stock market, the Dow Jones index [wiped](https://thehill.com/policy/488231-dow-erases-all-gains-under-trump) out all the gains of Donald Trump’s presidency before rebounding on reports the U.S. Congress would pass a stimulus bill. As air travel and other transport is ratcheted back globally, oil demand has fallen by around 20 percent, and analysts estimate it will be down by at least 5 percent in all of 2020 compared to last year. A huge hit to economic growth would likely mean carbon emissions will fall in 2020 for the first time since the Great Recession of 2008. That may seem like good news, but it is not. First of all, economic contractions are not a desirable or sustainable way to curb emissions; emissions rebounded sharply after 2009. More importantly, the fact that it takes severe economic slowdowns like the Great Recession or COVID-19 to bring emissions down serves as a reminder of just how strongly tied emissions remain to economic growth—and thus how hard it is to lower them. That is why energy from renewable sources can grow as rapidly as it has over the past decade and yet fossil fuel use can keep rising at the same time as total energy use rises around the world, especially in fast-growing economies like China and India. As one example, Marianne Kah, an economist at the Center on Global Energy Policy, deconstructed a range of projections of oil demand growth to understand why analysts differ on when oil demand will peak and [found](https://energypolicy.columbia.edu/research/report/electric-vehicle-penetration-and-its-impact-global-oil-demand-survey-2019-forecast-trends) that assumptions about economic growth are as important as assumptions about the penetration of electric vehicles. Policymakers have spent trillions of dollars and passed countless regulations, standards, and mandates to spur clean energy. That it takes a pandemic-induced economic standstill to actually bring emissions down should be a sobering reminder of just how hard addressing climate change will as living standards, fortunately, continue to rise in emerging markets. COVID-19 may deliver some short-term climate benefits by curbing energy use, or even longer-term benefits if economic stimulus is [linked](https://www.eenews.net/stories/1062581379) to climate goals—or if people get used to [telecommuting](https://www.cfr.org/blog/concerns-over-coronavirus-spread-oil-industry) and thus use less oil in the future. Yet any climate benefits from the COVID-19 crisis are likely to be fleeting and negligible. Rather, the pandemic is a reminder of just how wicked a problem climate change is because it requires collective action, public understanding and buy-in, and decarbonizing the energy mix while supporting economic growth and energy use around the world.

#### Biden can’t wield PC- acts like a senator not a president

Henry Olsen, 10-22-2021, "Why Biden, a Senate success, is a White House mess," Washington Post, https://www.washingtonpost.com/opinions/2021/10/22/why-biden-senate-success-is-white-house-mess/

President Biden’s 36 years in the Senate define his political style. That’s a plus when it comes to the inside-baseball negotiating that produces legislation. It’s a huge minus, however, when it comes to displaying the consistent, public leadership that defines successful presidencies. It’s increasingly obvious that Biden does not possess that crucial skill.

The most successful presidents have a few things in common. They build their public careers around a core idea, such as Thomas Jefferson’s vision of agrarian republicanism or Franklin D. Roosevelt’s belief in a strong, compassionate national government. They use rhetoric to rally the public behind them so that there’s no mistake what electing them will bring. Their earliest legislative proposals flow from that core, and they are consistent in pursuing their aims even if the final details are subject to negotiation. Look at the presidents who changed the country — Jefferson, Abraham Lincoln, Roosevelt, Ronald Reagan — and each displays the same characteristics.

Biden is nothing like these men. He has been in the national eye for nearly 50 years, and one simply cannot identify a single, defining core principle. Biden instead shifts with the tides — he was a moderate Democrat opposed to abortion rights when that was the center of Delaware public opinion, and a mild progressive opposed to any abortion regulations when that’s what the national party desired. He is a political Zelig, able to materialize in whatever image Democrats want to project.

This is a good skill to have in the Senate. Staying relevant to political debates means you’re positioned to help craft solutions. The clashing factions in a debate trust you to some degree, enabling someone such as Biden to broker compromises that excite none but satisfy all. It’s the type of skill set that Senate Minority Leader Mitch McConnell (R-Ky.) uses to devastating effect on his caucus’s behalf. Every party needs people like Biden.

The gap between the roles of senator and president is why Biden is so ineffectual — and why his agenda is on life support. He did not campaign on an overarching goal or core idea. Instead, he presented himself as the return of stability and normalcy after four tumultuous years of Donald Trump.

Americans knew in 1932 that they were voting for someone who believed that the need for emergency action outweighed old constitutional nostrums, just as they knew in 1980 that Reagan wanted lower taxes and bigger defense budgets. Biden’s massive multitrillion-dollar domestic spending proposals thus have shocked the crucial set of moderate independents who backed him.

Biden’s attempts at displaying presidential leadership also betray his senatorial roots. He has not mounted a sustained public effort to mobilize public opinion behind his plans. Instead, he has played the inside game he’s comfortable with, meeting with progressives and moderates to try to broker compromises. This makes him appear to be a captive to events and personalities outside of his control, which is not what Americans want from their presidents.

He is prone to pandering to all sides in these debates, offering loud public statements of support for a particular group’s concerns when they demand one, but then doing nothing to back those words up with deeds.

He panders to progressives by giving a speech on voting legislation when their cherished bill appeared stalled. He panders to moderates when he falsely says his domestic spending bill will cost “nothing,” when he really just means it won’t add to the deficit.

Biden has long backed moderates in their desire not to change the Senate filibuster rules, but Thursday night reversed course without warning by saying on a CNN town hall that he could support such changes for election-related legislation and “maybe more.” This, despite repeated comments by Sens. Joe Manchin III (D-W.Va.) and Kyrsten Sinema (D-Ariz.) that they will not support changing the filibuster rules one iota, leaving Biden committed to change that he has no leverage to push.

That’s flailing, not leadership. Such feckless irresolution has its costs. Biden is increasingly viewed negatively by independents, which in turn is leading internal Democratic polls to show the entire party is in potential trouble for next year’s midterms.

In politics, weakness begets weakness: Savvy pols know when a ship is sinking and how not to get caught on board when it goes under. Biden could help himself by showing decisive, bold leadership, but that requires taking rhetorical risks, and pushing and punishing rather than cajoling. Instead, the shifting Biden sands leave even potential enforcers such as House Speaker Nancy Pelosi (D-Calif.) hung out to dry, as with his vacillation on passing a stand-alone bipartisan infrastructure bill. No Democrats will stick their neck out for Biden, knowing he might cut it off without notice.

#### 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.”

#### 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."

#### Biden was already all in and failed- PC is exhausted

Michael D. Shear and Jim Tankersley, 10-28-2021, "Biden Implores Democrats to Support His Transformative Agenda," New York Times https://www.nytimes.com/2021/10/28/us/politics/infrastructure-bill-spending-plan.html

Mr. Biden and his aides gambled on Thursday, effectively calling for a final decision on his economic and environmental agenda and daring holdout Democrats not to back it. Senior administration officials said that the decision to go all-in was a product of the president’s belief that he had exhausted all avenues in the talks and secured the best possible package he could — and, crucially, that the package could command support from all corners of a fickle Democratic caucus.

But as he prepared to land in Rome, Mr. Biden’s bet had not yet paid off. He had not ended months of intraparty squabbling that has dragged down his poll ratings, jeopardized Democratic candidates and raised deep doubts among Americans that his presidency can deliver on the promises of a vast social and economic agenda.

In the closed-door session on Thursday, Speaker Nancy Pelosi told Democratic lawmakers that “when the president gets off that plane, we want him to have a vote of confidence from this Congress.” She urged them to vote on Thursday on a separate, bipartisan $1 trillion infrastructure measure that progressives have seen as their best leverage to ensure passage of the rest of Mr. Biden’s agenda.

Instead, for the second time in a month, Ms. Pelosi pulled back from plans on that vote after progressive Democrats objected again. They ignored the president’s entreaties, signaling their continued mistrust of moderate Democratic senators, whom they fear will not back Mr. Biden’s larger social spending bill when it finally comes to a vote.

#### Glasgow fails- commitments don’t translate into emissions cuts

Debra Kahn, 10-27-2021, "Schwarzenegger: 'Nothing is getting done' at U.N. climate summits," Politico PRO, https://www.politico.com/states/california/whiteboard/2021/10/27/schwarzenegger-nothing-is-getting-done-at-un-climate-summits-1392090

Former California Gov. Arnold Schwarzenegger on Wednesday criticized the upcoming U.N. climate talks, saying they promote countries' empty promises on emissions reductions and funding.

What happened: Speaking at an environmental justice conference put on by the South Coast Air Quality Management District, Schwarzenegger — who signed California's first economywide greenhouse gas mandate in 2006 — said the international climate process was largely an exercise in futility.

"What does a promise and a pledge mean in the end?" he asked. "Nothing. Over and over, year after year, they make these pledges and they come out to declare victory, but then nothing is getting done."

Schwarzenegger said he wanted the international community and environmentalists to take a different approach than the annual Conference of Parties, which is taking place next week in Glasgow, Scotland. California Gov. Gavin Newsom and 15 lawmakers are planning to attend.

"I think it's set up the wrong way," Schwarzenegger said. "Every time you meet and you meet and you meet, and now decades later, you have the same problems as you have had decades before, you ask yourself, 'How much longer do you want to go and do the same thing?' Remember what Einstein said, 'The definition of insanity is to do the same thing over and over again and expect different results.' You're not going to get different results."

He said the basic U.N. model of having national leaders make commitments was flawed, pointing to President Bill Clinton's signing of the Kyoto Protocol and the Senate's subsequent refusal to ratify it.

#### European gas crisis thumps

Melissa Eddy and Somini Sengupta, 10-29-2021, "An Electricity Crisis Complicates the Climate Crisis in Europe," New York TImes, https://www.nytimes.com/2021/10/29/climate/europe-energy-crisis-cop.html

The soaring price of electricity represents a Rorschach test for Europe’s politicians. Depending on their leanings, it is either a reason to wean the continent from fossil fuels more swiftly — or more slowly.

The timing is crucial. European Union leaders have cast themselves as the vanguard of a global green transition at the international climate talks that kick off this weekend in Glasgow.

The repercussions are vast. How Europe emerges from the current energy crisis will bear on how the world addresses the climate crisis. Europe accounts for a very large share of global emissions produced since the start of the industrial age, and its ability to pivot away from fossil fuels is key to averting ruinous rates of global warming.

At the heart of the surge in electricity prices is Europe’s reliance on natural gas to turn on the lights, heat homes, and power industry. Even though most countries in the bloc are moving away from coal faster than other parts of the world, like Asia, they have continued to lean on gas while building out their renewable energy infrastructure.

Under European energy rules, the price of gas drives the price of electricity. Gas accounts for a fifth of Europe’s energy consumption, and most of it is imported from Russia.

But while natural gas is less polluting than coal, it is still a fossil fuel that produces carbon dioxide emissions that are warming up the planet. And without a gas exit plan, there is no way for Europe to meet its own climate target, which is to reduce its emissions by 55 percent by 2030 compared with 1990 levels.

The power crisis, in other words, is accelerating a reckoning over gas — and foreshadowing what other parts of the world will face as they make their energy transitions.

“It’s bringing to the fore the question, ‘What do we do about gas?’” said Lucie Mattera, the Europe analyst for E3G, a climate research group.

It is also undermining unity about how to transition to renewables. While policies designed to address climate change are not the main driver of rising electricity prices, some European leaders are claiming that is the case. The cause is basically that demand for gas has soared — sending prices skyward — as the industrialized world has bounced back from the depths of the pandemic and started returning to its normal working rhythm.

But some governments across the continent now fear that higher heating bills this winter could bolster populists in upcoming national elections in several countries, or trigger social unrest like the “Yellow Vests” protests from 2018 in France.

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Spain, on the other hand, has pressed for a faster transition to renewable energy, precisely so that the continent isn’t forever subjected to the ups and downs of the gas market. “The present and the future belong to renewable energies and we cannot solve a crisis caused precisely by dependence on fossil fuels by looking to the past,” Teresa Ribera, its deputy prime minister and a longtime climate advocate, said in an email. “The Spanish government believes that the transition must be accelerated, not slowed down.”

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“The fact that the E.U. has succeeded in getting a lot of coal off the energy grid actually makes things worse,” Mr. Gore pointed out. “That’s a good thing, but it’s unfortunate that it happened to coincide with everything else.”

#### Biden passing tough bills expands his political capital

Stankiewicz 1/20/21 (Kevin - associate reporter for *CNBC.com*, “Sen. Chris Coons says Biden has ‘practical’ bent, hopes for cooperation in Congress,” https://www.cnbc.com/2021/01/20/biden-inauguration-day-live-updates-stream.html)

Democratic Sen. Chris Coons told CNBC he is hopeful President Joe Biden’s plans to address the Covid-19 crisis could set the tone for bipartisan cooperation in Washington. “I think it’s possible for Joe Biden, by responding to this pandemic in a competent and caring way, to actually build his political capital, to surprise the American people by showing that he and [GOP Sen.] Mitch McConnell, that the leaders in the House and the Senate, can actually work together to solve problems,” said Coons, a close ally to Biden and his fellow Delawarean. In an interview on “Power Lunch,” Coons said most Americans are fed up by inaction and partisan bickering from Congress. “Joe is someone who has never forgotten where he’s from, who has a practical, common-sense bent and who sees the suffering of the American people.” “He’s going to give us a chance to move forward, boldly, together, and I pray that the Congress takes him up on it,” Coons said.

### AT: Per Se---Beschle---NU

#### Their evidence says “per se” generates confusion not precision. [EMORY READS BLUE]

Donald L. Beschle 87, Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471

In response to recent attacks on per se rules, courts have clung to the term and to its absolutism by steadily narrowing the definitions of the types of behavior subject to those rules. The result has been not only much confusion, with words being used to designate things far narrower than their commonly understood meanings, but also the application of permissive rule of reason treatment to some behavior which, while not meriting absolute prohibition, clearly deserves careful antitrust analysis.

The proper response to this confusion is to retain the valid insight of per se jurisprudence, that certain types of behavior should be treated as more suspect than others, while abandoning the indefensible absolutism of the term "per se." However, since terms carry with them not only precise meanings, but also more general attitudes, "per se" must be replaced with a term which does not carry the permissive connotations which have become associated with the "rule of reason."

The best available term for this new test is strict antitrust scrutiny. The use of such a term, and the type of analysis it suggests, is well known in constitutional law, where it by no means is associated with leniency. When faced with conduct which would traditionally be labelled per se illegal under the antitrust laws, courts should apply strict antitrust scrutiny. They should ask whether the defendant can carry the heavy burden of demonstrating that its conduct is narrowly tailored to achieve a procompetitive end. By replacing a system which places absolute prohibitions on types of conduct which can be defined so narrowly as to be irrelevant with a system which places, not absolute prohibitions, but heavy negative presumptions, on a larger set of behaviors, strict scrutiny should, on the whole, lead to more vigorous antitrust enforcement.

#### The thesis is abandon “per se”---its resolutionally impossible---either requires the aff to eliminate procompetitive activities or the qualification links to their offense.

Donald L. Beschle 87, Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471 https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2894&context=hastings\_law\_journal

This Article argues that the defenders of per se analysis have assigned themselves an impossible task. Arguing that types of activity can be identified as invariably anticompetitive is futile; counterexamples can almost always be put forward. Consequently, defenders of per se categorization are reduced to one of two unattractive alternatives. First, they can concede that per se categories may in some instances prohibit procompetitive activity, but argue that the overall benefits of per se categorization justify the result. Such an argument is unsatisfying because it explicitly sacrifices particular blameless defendants in order to search for an increase in general welfare. Second, per se defenders can narrow their categories to eliminate procompetitive counterexamples. This strategy, ,however, threatens to destroy those categories entirely. And if most of the once-condemned activity is returned to the realm of the rule of reason, the insight that certain types of behavior are particularly dangerous is lost.

The solution to this dilemma is to abandon the phrase "per se illegal," with its unrealistic connotations of absolute prohibition, yet retain a stringent test for particularly suspect activity. This new test must place a heavy burden of justification upon the defendant, yet not make justification impossible when the defendant's activity is clearly procompetitive. To abandon per se illegality with no alternative but rule of reason analysis would be to send an unwise message of government tolerance of practices threatening competition. But an alternative approach does exist.

#### Distorts literature, collapses aff ground and turns the topic to semantics---change the debate.

Donald L. Beschle 87, Associate Professor of Law, The John Marshall School of Law. B.A., 1973, Fordham University; J.D., 1976, New York University School of Law; LL.M., 1983, Temple University School of Law. March. CURRENT TOPIC IN ANTITRUST: "What, Never? Well, Hardly Ever": Strict Antitrust Scrutiny as an Alternative to Per Se Antitrust Illegality., 38 Hastings L.J. 471 <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2894&context=hastings_law_journal>

It is not surprising that defenders of the per se concept are losing ground, both in the academic literature and in the courts. This situation, however, is much less a reflection of any defect in the general position advocating vigorous antitrust enforcement than an indication of a fundamental flaw in the concept chosen to implement that position. From the earliest days of antitrust, advocates of vigorous enforcement have made strong and appealing arguments for listing certain types of conduct as clearly and invariably forbidden. 57 Not only would this categorization make enforcement of the antitrust laws quicker and more certain, it would also serve to deter far more anticompetitive behavior. Certainty and judicial economy are no doubt valid concerns, and vigorous enforcement of the antitrust laws is certainly consistent with the spirit of the public and the legislators who adopted them. 158

But the use of the concept of per se illegality has been unfortunate. To the extent that the term means what it says-that certain practices will invariably be illegal-it is difficult to defend. If a practice is to be classified as invariably illegal, it should be so designated only upon a showing that it will always (or at least almost always) cause harm outweighing any benefits which it may produce. Some courts have so held, stating that the per se label will be reserved for practices which will always, or almost always, fail the standard test of antitrust analysis, the rule of reason. 159

Absolutes, however, even when qualified with the word "almost," are hard to prove. In an area as complex as the effect of concerted business practices on coml3etition, numerous counterexamples, both hypothetical and actual, may be advanced to rebut the contention that any such practice invariably injures competition. To defend per se illegality, then, is to defend something almost inevitably indefensible. The only possible way to defend the concept effectively is to resort to the course currently being taken by the Supreme Court: to narrow the categories so far as to make the question of categorization almost as complex as full rule of reason analysis. At that point, the defense of the per se concept becomes merely an exercise in semantics.

If the concept of per se illegality is indefensible, except when so refined as to make it largely irrelevant, why continue to defend it at all? Why not simply abandon the field to the rule of reason? It seems clear that the battle over the per se rules is less a clash over those specific rules than a battle over basic attitudes toward antitrust enforcement. For better or worse, per se rules have become linked in most minds with vigorous enforcement; to favor one is to favor the other. The rule of reason, on the other hand, is associated with a tolerant attitude toward antitrust defendants. Rule of reason analysis often-perhaps usually-leads to a finding of no liability. Its complexity and uncertainty can deter plaintiffs from even attempting to challenge behavior which many would say should be challenged. Since, to so many, rule of reason analysis means a type of antitrust enforcement under which much anticompetitive activity will be permitted, per se analysis is defended, not so much for its own virtues, but rather because of fears of the permissive nature of its sole obvious rival.

An alternative system of antitrust analysis would ideally avoid the indefensible and ultimately self-defeating absolutes of per se analysis, yet also avoid such complexity and uncertainty that harmful or suspect business activities would go unchallenged. Once formulated, such an alternative should be embraced by advocates of vigorous antitrust enforcement. Although some may be reluctant to abandon a concept such as per se illegality which has been defended for so long, if its defense is clearly doomed to failure by inherent flaws in the concept, the battle lines should be drawn around a new perimeter not only capable of being defended, but also worth defending.

## DA

### Won’t Pass

#### Won’t pass- no progress and Biden and Pelosi lack leverage

Niall Stanage, 10-29-2021, "The Memo: Democrats stall out on brink of victory," TheHill, https://thehill.com/homenews/administration/579042-the-memo-democrats-stall-out-on-brink-of-victory

But even if that proves true, it doesn’t change the fact that the party’s roiling internal tensions are causing serious problems here and now.

Speaker Nancy Pelosi (D-Calif.) early Thursday evening delayed a vote on a separate $1 trillion infrastructure measure, despite having pushed hard to pass the measure earlier in the day.

The delay — the second postponement for the bill — was a rare exhibition of weakness from the Speaker, who prides herself on both her vote-counting abilities and her capacity to sway recalcitrant members of her caucus.

The reasons for the impasse are numerous, but none of them are good for Democrats.

Progressives are dismayed by the scale of the cuts to the social spending bill, which have seen cherished objectives like paid family leave, tuition-free community college and a clean electricity program stricken.

At the same time, the two Democratic senators who have extracted concessions in scaling back the original proposal — Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — are still vague about whether they are committed to supporting the framework that Biden has outlined.

Anger from more progressive Democrats has been simmering at Manchin and Sinema throughout the process, with some on the left openly accusing them of bad faith.

The left is not about to extend the benefit of the doubt to the duo now.

The upshot is that progressives were in no mood to back down from their position that they would not vote on the infrastructure package until they got more concrete assurances on the social spending bill.

Rep. Pramila Jayapal (D-Wash.), the head of the Congressional Progressive Caucus, reiterated in a Thursday afternoon statement that members of her group would not back one bill without the other.

Rep. Rashida Tlaib (D-Mich.), a member of the so-called "squad," told reporters she was “a ‘hell no’” to advancing infrastructure without certainty on the social spending bill.

Another "squad" member, Rep. Ayanna Pressley (D-Mass.), tweeted: “A deal is a deal. These bills move together.”

The vote delay amounted to another moral victory for the left.

But it also came as unwelcome news to Biden, who had wanted to shepherd a confirmed agreement home before departing for a transatlantic trip that will include a meeting with Pope Francis, a Group of 20 summit in Rome and a climate change conference in Glasgow, Scotland. Biden will not return to Washington until next Wednesday.

Pelosi was reported to have earlier told her caucus not to “embarrass” the president by rejecting the infrastructure bill. But the delay of the vote affirms that progressives were willing to do just that.

Biden himself had reportedly told Democrats on Capitol Hill that it was not “hyperbole to say that the House and Senate majorities, and my presidency, will be determined by what happens in the next week.”

Given the stakes involved, the lack of action is frustrating to many in the Democratic Party — even as they acknowledge the misgivings about the cuts to the big bill.

“The biggest obstacle that Democrats are facing right now is the lack of progress,” said Tad Devine, a strategist who held a senior role on Sen. Bernie Sanders’s (I-Vt.) 2016 presidential bid. “If they make progress, they can begin to tell a story. The Republicans have a well-developed story, and the Democrats are negotiating something that nobody seems to understand. That’s a loser.”

#### Won’t pass- Biden’s push failed

Sarah Ferris et al, 10-28-2021, with NICHOLAS WU, HEATHER CAYGLE and EUGENE DANIELS. "Fractious Dems struggle to unite around $1.75T megabill," https://www.politico.com/news/2021/10/28/biden-house-democrats-517416

Joe Biden and Nancy Pelosi revved their party toward a House vote as soon as Thursday on a $550 billion Senate-passed infrastructure bill, even as progressives aren't sold yet on taking what one called "a leap of faith in the president."

Soon after the White House outlined a framework for a $1.75 trillion deal on social spending, Biden made a high-stakes appearance on Capitol Hill to sell Pelosi's caucus on it. While some liberal priorities were included in the package of climate, health care and other social policy investments, others were scrapped — and multiple House progressives said they're not prepared to vote yes on infrastructure given their uncertainty about the framework's Senate future.

The Congressional Progressive Caucus held its own meeting after Biden left, as its chair Rep. Pramila Jayapal (D-Wash.) signaled her group still had significant concerns after the president’s pitch for its votes. One of her members, Rep. Cori Bush (D-Mo.), said simply "no" when asked if she would vote for the infrastructure bill after the president's push. Another, Rep. Rashida Tlaib (D-Mich.) answered "hell no" on the infrastructure question.

“There are too many no votes" in the progressive camp, Jayapal told reporters Thursday afternoon, to pass the infrastructure bill on Thursday.

### Glasgow Fails

#### European gas crisis thumps

Melissa Eddy and Somini Sengupta, 10-29-2021, "An Electricity Crisis Complicates the Climate Crisis in Europe," New York TImes, https://www.nytimes.com/2021/10/29/climate/europe-energy-crisis-cop.html

The soaring price of electricity represents a Rorschach test for Europe’s politicians. Depending on their leanings, it is either a reason to wean the continent from fossil fuels more swiftly — or more slowly.

The timing is crucial. European Union leaders have cast themselves as the vanguard of a global green transition at the international climate talks that kick off this weekend in Glasgow.

The repercussions are vast. How Europe emerges from the current energy crisis will bear on how the world addresses the climate crisis. Europe accounts for a very large share of global emissions produced since the start of the industrial age, and its ability to pivot away from fossil fuels is key to averting ruinous rates of global warming.

At the heart of the surge in electricity prices is Europe’s reliance on natural gas to turn on the lights, heat homes, and power industry. Even though most countries in the bloc are moving away from coal faster than other parts of the world, like Asia, they have continued to lean on gas while building out their renewable energy infrastructure.

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The power crisis, in other words, is accelerating a reckoning over gas — and foreshadowing what other parts of the world will face as they make their energy transitions.

“It’s bringing to the fore the question, ‘What do we do about gas?’” said Lucie Mattera, the Europe analyst for E3G, a climate research group.

It is also undermining unity about how to transition to renewables. While policies designed to address climate change are not the main driver of rising electricity prices, some European leaders are claiming that is the case. The cause is basically that demand for gas has soared — sending prices skyward — as the industrialized world has bounced back from the depths of the pandemic and started returning to its normal working rhythm.

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#### Glasgow fails- targets too small, no fast changes, factionalism

Economist, 10-23-2021, "Broken promises, energy shortages and covid-19 will hamper COP26," https://www.economist.com/international/2021/10/23/broken-promises-energy-shortages-and-covid-19-will-hamper-cop26?utm\_campaign=the-economist-today&utm\_medium=newsletter&utm\_source=salesforce-marketing-cloud&utm\_term=2021-10-25&utm\_content=article-link-5&etear=nl\_today\_5

A lot of hot air

Australia is an outlier among rich countries. Its original ndc was not particularly ambitious. Nor is its new one. Meanwhile many emerging economies have set lax targets. Russia and Indonesia are promising no new effort. By employing some creative carbon accounting, Mexico and Brazil have produced new strategies that are less ambitious than their original plans.

India, which is responsible for 7% of carbon-dioxide emissions, has not yet published a fresh climate strategy. Nor has China, which accounts for 28%. Last year it said that it planned to make its emissions peak “before” 2030, having previously said only that it would reach this milestone “around” that time. Many would like it to bring this date forward, but Li Shuo of Greenpeace thinks that is unlikely to happen soon. He says there is more chance China might strengthen its pledge by declaring an absolute figure above which its annual emissions will not rise.

Taken together, the new targets underwhelm. Promises made by the middle of this year give a 50% chance of keeping warming below 2.1°C but only a 5% chance of keeping it under 1.5°C, according to the International Energy Agency (iea), a forecaster (see chart). And this assumes that all the pledges are honoured, which is far from guaranteed.

On the tail of these lacklustre announcements is a failure relating to funding for developing countries. In 2009 rich countries vowed that by 2020 they would be providing poor ones with $100bn in climate finance each year. Roughly equal amounts were to go towards adaptation and to reducing emissions. The figure is a fraction of the $2trn annual investment that the iea believes developing countries need. But the promise is supposed to signal the willingness of richer countries to make sacrifices for the good of the planet.

In 2019 only $80bn was provided, according to the oecd, a club of rich countries. This year a last-minute whip-round could perhaps see the total rise above $100bn before the conference. But poor countries are miffed. The original deadline was 2020—when, because of the pandemic, the total was probably lower even than in 2019. And only about 25% of the cash is financing ways of adapting to climate change, instead of the 50% promised.

All these disappointments will cause hand-wringing at the summit. Rich countries may re-emphasise their willingness to lend. They may offer an aggregate figure over several years, such as $500bn between 2020 and 2025. But no country is likely to swiftly adjust its new ndc. Designing them takes months of work and co-ordination across government departments.

Instead, progress in Glasgow will probably have to come from agreements struck in narrower debates, the outcomes of which will help countries implement their existing climate strategies, and make them more likely to increase their ambitions in the future. One job is to agree on rules for international carbon markets, such as what double-counting means when it comes to carbon credits.

A second debate is about “loss and damage”, meaning how far countries that will suffer most from climate change should receive compensation. The topic is taboo among rich countries. In Paris they eventually allowed the concept to be mentioned in the agreement, but resisted language that might actually lead to something being done. Poor countries hope to move it up the agenda and to lay the groundwork for more concrete discussions in the future.

Third comes the effort to get governments to sign up to sector-level pledges, such as to stop burning coal, ban the sale of internal-combustion engines and halt deforestation. The Global Methane Pledge, a promising new pact, calls for cutting global methane emissions by at least 30% from 2020 levels by 2030. Its backers include America and the eu. Measured over 20 years, a tonne of methane causes 86 times more warming than a tonne of carbon dioxide but the gas is naturally removed from the atmosphere much faster than CO2. The Climate and Clean Air Coalition, made up of governments and lobby groups, says cutting human-made methane emissions in half by 2050 could lower temperatures by about 0.2°C.

The fourth topic is what Helen Mountford of the World Resources Institute, a think-tank, calls “keeping 1.5°C alive”. Green groups and some governments want countries to acknowledge that the world is failing to slow global warming, and to state explicitly that they wish to keep the increase under 1.5°C. China and India refused to back a similar statement at the g20 summit in July. They feel that if the temperature targets are revised the same should happen to the climate-finance goals.

A global energy shortage provides an unfortunate backdrop to the discussions. In Asia coal shortages are forcing factories to curb output. European gas and power prices have gone berserk. Governments are watching Joe Biden try to get legislation containing support for clean-energy firms through Congress. The wrangling is a reminder of the difficulties democratic countries face when they seek to enact big climate reforms.

Covid-19 has increased the costs and risks of getting negotiators to the summit. Poor countries, in particular, may send fewer than usual. Even in normal times they are at a disadvantage to rich places, which can send hordes of technocrats. The fact that many rich countries appear to be past the worst of the pandemic, while poor ones are still struggling through it, will only make such inequalities rankle more.

Block parties

All this could deepen the usual factionalism. Delegations attending the cop typically form three blocks. Poor countries ask rich ones for more ambition and more money. Rich countries try to convince emerging ones, which account for the lion’s share of the growth in emissions, to pollute less. And emerging economies try to tell rich countries that they are in fact part of the poor and vulnerable group, while also reminding rich countries that they got where they are today by polluting.

Yet there are some signs that these old alliances are loosening. Emerging economies have less excuse for inaction than they did when Donald Trump was in the White House, says Laurence Tubiana of the European Climate Foundation, a lobby group (Mr Trump pulled America out of the Paris agreement; it rejoined in February). Some, such as South Africa, are becoming more ambitious. In September China said it would no longer finance new coal-fired power stations outside its borders. Natural disasters in rich countries, such as floods in Germany that killed almost 200 people, may bring a new sense of urgency.

Any progress made at cop26 will probably be incremental, not a “big leap” of the sort John Kerry, America’s climate envoy, has promised. That will enrage grassroots activists. And it hardly matches the scale of the challenge. Two years from now a “Global Stocktake” scheduled under the Paris agreement will examine how well governments are implementing their climate plans. If their most recent climate promises are any indication, the stocktake could reveal a rather bare cupboard