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**1AC**

**Inequality---1AC**

**Advantage 1 is Inequality.**

#### Labor market power through monopsony causes inequality and wage stagnation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Soft power solves global existential risks.

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

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

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

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

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

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

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

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

**A worker welfare standard would protect workers and reduce labor market concentration.**

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

#### 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.

**Modeling---1AC**

**Advantage 2 is Modeling.**

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

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

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

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

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

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

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

**Populism causes extinction.**

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

**Specifically, the Philippines mirrors the consumer welfare standard after US law, but it must consider the AFF’s standard to promote development.**

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

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

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Enjoyment of the foregoing advantages should not, however, serve as vices that hinder the PCC from pursuing other policy objectives **beyond economic efficiency and consumer welfare.** The two virtues are, after all, **not without their shortcomings**-a strong admonition against the PCC from exclusively limiting its mandate to said virtues. Moreover, "with the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws," Congress has **vested "a larger amount of discretion in administrative and executive officials**, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest." 9 0 To begin with, economics may not be as impartial a science as one might paint it to be, while economic efficiency and consumer welfare may not be as dispassionate. Economics, after all, is a tool that can be harnessed to suit any end. As incisively expressed in one article: Despite the laborious techniques and scientific pretention, most brands of economics are covertly ideological. Marxian economics, with its labor theory of value, assumes the inevitability of class conflict, and hence, the necessity of class struggle. Keynesianism, with its conviction that industrial capitalism is systematically unstable, offers an equally "scientific" rationale for government intervention. Neoclassical economics, with its reliance on the efficiency of markets, is a lavishly 9 Although legal analysis can now be expressed in terms of graphs, functions, equations and charts, this does not mean that competition agencies automatically possess the "cold neutrality of an impartial judge[.]" 92 **Antitrust and competition policy**, no different from the application of any other law, is **not an autarchic field** but is instead responsive to the warp and woof of other civil, political, and social dimensions. More alarmingly, employing the standards of economic efficiency and consumer welfare-more so when done to the **exclusion** of other goals-have, in some instances, **perversely led to economic injury.** Efficiency or welfare analysis has been criticized as ascribing to distinct goods and services the same social utility. Such a one-dimensional take fails to account for the harm certain goods-for instance, tobacco and guns- inflict on society. Since efficiency and welfare are primarily concerned with delivering the most competitive prices to consumers, **regulators end up making harmful goods more accessible to the consuming public.** 93 Furthermore, in a regime that adopts efficiency and/or welfare to the exclusion of other standards, "conduct that did not impair efficiency would be permitted, **regardless of the effects competitors, or the political economy at large**." 4 From a broader perspective, efficiency and consumer welfare are but two aspirations in the entire universe of objectives that antitrust may pursue. The United States case of Brown Shoe v. United States95 is instructive on this matter: Congress provided no definite quantitative or qualitative tests by which enforcement agencies were to gauge the effects of a given merger, but rather that Congress intended that a variety of economic and other factors be considered in determining whether the merger was consistent with maintaining competition in the industry in which the merging 96 The PCC shall inevitably encounter cases that will entail the application of other considerations since going by the economic efficiency or consumer welfare approach alone would be a dereliction of the duties to address various issues and promote other equally important values. As more complex variables factor into the agency's calculus, the PCC would risk undercutting its mandate if it were to limit its goals. In such case, **the ultimate loser would be society.**

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

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

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

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The terrorism-piracy nexus and port security

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

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

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

ISPS code and littoral security

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

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

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

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

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

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

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

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

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

A next terrorist attack: Gauging the odds

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

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

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

**The plan solves---US antitrust law is modeled---the stakes are huge.**

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

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

**Democracy---1AC**

**Advantage 3 is Democracy.**

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

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

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

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

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

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

**That collapses court legitimacy and constitutional separation of powers.**

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

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

**Rule of law is essential to stave off societal collapse.**

Stephen **Breyer 18**. An associate justice of the Supreme Court of the United States. “AMERICA’S COURTS CAN’T IGNORE THE WORLD” The Atlantic. October 2018. <https://www.theatlantic.com/magazine/archive/2018/10/stephen-breyer-supreme-court-world/568360/>

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

**Judicial activism collapses democracy.**

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

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

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

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

3. Implications for Interpretation

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

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

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

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

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

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

National-security analysts see China as one of the greatest threats facing the United States and its allies. According to an emerging conventional wisdom, China has the leg up on the U.S. in part because its authoritarian government can strategically plan for the long term, unencumbered by competing branches of government, regular elections, and public opinion. **Yet this faith in autocratic ascendance and democratic decline is contrary to historical fact. China may be able to put forth big, bold plans**—the kinds of projects that analysts think of as long term—**but the visionary projects of autocrats don’t usually pan out**. Watch White Noise, the inside story of the alt-right The Atlantic’s first feature documentary ventures into the underbelly of the far-right movement to explore the seductive power of extremism. Stream Now Yes, democratic governments are obligated to answer to their citizens on regular intervals and are sensitive to public opinion—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.

**Plan---1AC**

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

**Solvency---1AC**

**Contention 4 is Solvency.**

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

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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.**

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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

# 2AC---NU---R3

### Inequality---OV

### Modeling---OV

### Democracy---OV

#### US democratic leadership is key to prevent great power war.

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To answer these questions, we lack a crystal ball, but **theory** and **history** can serve as a guide they suggest a clear answer: **democracies** enjoy a **built-in advantage** in long-run geopolitical competitions.¶ The idea that **democracies** are better able to **accumulate** and **maintain power** in the international system has a distinguished pedigree. Polybius, Machiavelli, and Montesquieu are among the classical political theorists who argued that republican forms of government are best able to harness available domestic resources toward national greatness. And recent social science research concurs. For the past two decades, **cutting-edge research** in **economics** and **political science** has been obsessed with the issue of whether democracies are different and the **consistent finding** is that they perform a number of key functions better than their autocratic counterparts. They have higher long-run rates of economic growth.13 They are better able to raise debt in international capital markets and become international financial centers.14 They build stronger and more reliable alliances.15 They are more effective in international coercive diplomacy.16 They are less likely to fight wars (at least against other democracies).17 And they are more likely to win the wars that they fight.18¶ This book takes this line of argument a step further by aggregating these narrower findings into a broader theory about the relative fitness of democracy and autocracy in great power political competitions. The central argument of this book is that democracies do better in major power rivalries. After all, it is not much of a logical leap to assume that states that systematically perform better on these important economic, diplomatic, and military tasks will do better in long-run geopolitical competitions than those that do not¶ This hunch is supported by the empirical record. As this book will show, autocrats often put up a good fight, but they fail to ultimately seize lasting global leadership. Napoleon, Hitler, and the Soviet Union are among the examples of authoritarian nations that launched campaigns for world domination, but came up short. On the other hand, states with relatively more open forms of government have often been able to establish themselves as the international system’s leading state, from Athens and the Roman Republic in the Ancient world to British Empire and the **U**nited **S**tates in more recent times. According to some scholars, the world’s leading state since the 1600s has also been among its most democratic. 19 It is hard to argue with an **undefeated record of four centuries and counting**.¶ America’s greatest strength in its coming competition with Russia and China, therefore, is **not its military might or economic strength, but its institutions**. For all of its faults, America’s fundamentals are still better than Russia’s and China’s. There is good reason to believe, therefore, that the American era will **endure** and the autocratic challenges posed by China and Russia will **run out of steam**.¶ The idea that democracies dominate may seem counterintuitive. After all, throughout history many have argued that dictators have a foreign policy advantage. 20 Autocrats can be ruthless when necessary, but democracies are constrained by public opinion and ethical and legal concerns. Autocrats take decisive action, but democracies dither in endless debate. Autocrats strategically plan for the long-term while democracies cannot see beyond a two or four-year election cycle. Many today laud Russia and China’s autocratic systems for precisely these reasons. Russians play chess and Chinese play go, but Americans play checkers, as the aphorism has it.¶ It is true that autocracies are better at taking swift and bold action, but **impulsive decisions** uninformed by **vigorous public debate** often result in **spectacular failure**. Hitler, for example, was able to harness new technology to create Blitzkrieg warfare and conquer much of Europe, but he also invaded Russia in winter and needlessly declared war on the **U**nited **S**tates. Unfortunately, for autocracies, this story is **all too common**. As Machiavelli wrote in his Discourses on Livy in the 16th century: “Fewer errors will be seen in the people than in the prince—and those lesser and having greater remedies.”21 “Hence it arises that a republic has greater life and has good fortune longer than a principality.”22¶ There is good reason to hope that this argument is true because continued American leadership would be beneficial to the **U**nited **S**tates and the rest of the free world. The decline of American power would certainly be unwelcome for the **U**nited **S**tates. Americans have certainly grown accustomed to the benefits that accrue to the world’s leading power. But **billions** of others also have a **stake in America’s success**. For all of its faults, the **U**nited **S**tates has been a fairly benevolent hegemon. While far from perfect, it has gone to extraordinary lengths to provide security, promote economic development, and nurture democracy and human rights. The world is certainly safer, richer, and more free today than it was before the dawn of the American era.¶ There is little reason to believe that Russia and China will be as kind. These autocratic powers long to establish spheres of influence in their near abroad and they have shown little concern for the sovereignty or personal freedoms of their own citizens or subjected populations. If readers doubt these claims, they can simply ask citizens of American allies in Eastern Europe or East Asia whether they desire continued American leadership, or whether they would prefer to live under the thumb of Moscow and Beijing, respectively.¶ Even more consequentially for the globe, however, the decline of the **U**nited **S**tates could very well result in a **major war**.

As noted above, international relations theory maintains that the decline of one dominant power and the rise of another often results in great power war.23 According to this telling, **World War I** and **World War II** were primarily the result of the decline of the British empire and the rise of Imperial and then Nazi Germany as a major competitor on the European continent. Falling powers fight **preventive wars** in a bid to remain on top and rising powers launch conflicts to dislodge the reigning power and claim their “place in the sun.”24Many fear that a power transition between Beijing and Washington would produce a **similar catastrophic result**. 25 **Continued American leadership**, therefore, **could forestall this transition** and may be a **necessary condition** for **continued world peace and stability** among the great powers.

### T-Per Se

#### We meet---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

#### Prohibition includes per se and rule of reason.

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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

### 2AC---Capitalism K

#### C) Centralized fails---the aff’s worker organization premise is better.

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Judis hasn’t completely freed himself from the old socialist nostalgia. He writes that “the idea of socialism as a command economy of nationalized firms was dashed by the collapse of the Soviet Union,” but that idea was dashed long before when it became clear that a centralized economy is massively inefficient and wasteful. It shouldn’t have taken outright collapse to show that democratic central planning is an oxymoron, that (as Bakunin had warned Marx) the concentration of economic power in the state would inevitably engender a tyrannical oligarchy. If your political faith was dashed by the fall of the USSR, you probably weren’t paying attention, because it never deserved your faith.

The American labor movement offers a more attractive tradition. Here the DSA is right: “Most of all, socialists look to unions to make private business more accountable.” Unions have been foolishly neglected by the Democratic Party for a long time. Employers have become increasingly sophisticated in defeating the aims of the National Labor Relations Act, just as taxpayers keep devising clever ways to get around the tax code. But Congress has constantly amended the law to eliminate tax loopholes, while through the Carter, Clinton, and Obama administrations congressional Democrats did little to stop union-busting. For example, they failed to block state right-to-work laws, which depress Democratic voting shares and turnout by about 3 percentage points.

The point here is Madisonian: Abuses will happen whenever there’s unaccountable power. Big business is too powerful. But the danger that someone will be too powerful is not an artifact of capitalism. “Whenever modern idealists are confronted with the divisive and corrosive effects of man’s self-love,” Reinhold Niebuhr wrote in 1944, “they look for some immediate cause of this perennial tendency, usually in some specific form of social organization.” The problem is neither capitalism nor socialism but the many Americans who lack associations that will defend their interests.

The political system is unlikely to deliver much to the lowest-paid workers if they are politically quiescent and disorganized, easily beguiled by fraudsters like Fox News and Trump. The decline of the proportion of unionized American workers has been one of the principal causes of rising economic inequality. Organized labor was one of the few mechanisms that mobilized the less advantaged members of society into coherent voting blocs. Without private sector unions, there is little pressure to respond to those people’s interests.

#### 6---Regulated capitalism solves war, environment, and quality of life---alternatives increase degradation and poverty. Prefer empirical and measurable indicators.

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Discourse on food ethics often advocates the anti-capitalist idea that we need less capitalism, less growth, and less globalization if we want to make the world a better and more equitable place, with arguments focused on applications to food, globalization, and a just society. For example, arguments for this anti-capitalist view are at the core of some chapters in nearly every handbook and edited volume in the rapidly expanding subdiscipline of food ethics. None of these volumes (or any article published in this subdiscipline broadly construed) focuses on a defense of globalized capitalism.1

More generally, discourse on global ethics, environment, and political theory in much of academia—and in society—increasingly features this anti-capitalist idea as well.2 The idea is especially prominent in discourse surrounding the environment, climate, and global poverty, where we face a nexus of problems of which capitalism is a key driver, including climate change, air and water pollution, the challenge of feeding the world, ensuring sustainable development for the world's poorest, and other interrelated challenges.

It is therefore important to ask whether this anti-capitalist idea is justified by reason and evidence that is as strong as the degree of confidence placed in it by activists and many commentators on food ethics, global ethics, and political theory, more generally.

In fact, many experts argue that this anti-capitalist idea is not supported by reason and argument and is actually wrong. The main contribution of this essay is to explain the structure of the leading arguments against the anti-capitalist idea, and in favor of the opposite conclusion. I begin by focusing on the general argument in favor of well-regulated globalized capitalism as the key to a just, flourishing, and environmentally healthy world. This is the most important of all of the arguments in terms of its consequences for health, wellbeing, and justice, and it is endorsed by experts in the empirically minded disciplines best placed to analyze the issue, including experts in long-run global development, human health, wellbeing, economics, law, public policy, and other related disciplines. On the basis of the arguments outlined below, well-regulated capitalism has been endorsed by recent Democratic presidents of the United States such as Barack Obama, and by progressive Nobel laureates who have devoted their lives to human development and more equitable societies, as well as by a wide range of experts in government and leading nongovernmental organizations.

The goal of this essay is to make the structure and importance of these arguments clear, and thereby highlight that discourse on global ethics and political theory should engage carefully with them. The goal is not to endorse them as necessarily sound and correct. The essay will begin by examining general arguments for and against capitalism, and then turn to implications for food, the environment, climate change, and beyond.

Arguments for and against Forms of Capitalism

The Argument against Capitalism

Capitalism is often argued to be a key driver of many of society's ills: inequalities, pollution, land use changes, and incentives that cause people to live differently than in their ideal dreams. Capitalism can sometimes deepen injustices. These negative consequences are easy to see—resting, as they do, at the center of many of society's greatest challenges.3

And at the same time, it is often difficult to see the positive consequences of capitalism.4 What are the positive consequences of allowing private interests to clear-cut forests and plant crops, especially if those private interests are rich multinational corporations and the forests are in poor, developing countries whose citizens do not receive the profits from deforestation? Why give private companies the right to exploit resources at all, since exploitation almost always has some negative consequences such as those listed above? These are the right questions to ask, and they highlight genuine challenges to capitalism. And in light of these challenges, it is reasonable to consider the possibility that perhaps a different economic system altogether would be more equitable and beneficial to the global population.

The Argument for Well-Regulated Capitalism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ---Transition Fails

#### Collapse kills billions and degrades the environment --- it’s try-or die to engineer a soft-landing.

George MONBIOT 9. Visiting Professor in the School of the Built Environment, Oxford Brookes University; recipient of the United Nations Global 500 Award for outstanding environmental achievement; named one of the forty international prophets of the twenty-first century by the UK’S Independent. “Is There Any Point in Fighting to Stave Off Industrial Apocalypse.” Guardian. August 17. <http://www.guardian.co.uk/commentisfree/cif-green/2009/aug/17/environment-climate-change>.

The interesting question, and the one that probably divides us, is this: to what extent should we welcome the likely collapse of industrial civilisation? Or more precisely: to what extent do we believe that some good may come of it?

I detect in your writings, and in the conversations we have had, an attraction towards – almost a yearning for – this apocalypse, a sense that you see it as a cleansing fire that will rid the world of a diseased society. If this is your view, I do not share it. I'm sure we can agree that the immediate consequences of collapse would be hideous: the breakdown of the systems that keep most of us alive; mass starvation; war. These alone surely give us sufficient reason to fight on, however faint our chances appear. But even if we were somehow able to put this out of our minds, I believe that what is likely to come out on the other side will be worse than our current settlement.

Here are three observations: 1 Our species (unlike most of its members) is tough and resilient; 2 When civilisations collapse, psychopaths take over; 3 We seldom learn from others' mistakes.

From the first observation, this follows: even if you are hardened to the fate of humans, you can surely see that our species will not become extinct without causing the extinction of almost all others. However hard we fall, we will recover sufficiently to land another hammer blow on the biosphere. We will continue to do so until there is so little left that even Homo sapiens can no longer survive. This is the ecological destiny of a species possessed of outstanding intelligence, opposable thumbs and an ability to interpret and exploit almost every possible resource – in the absence of political restraint.

From the second and third observations, this follows: instead of gathering as free collectives of happy householders, survivors of this collapse will be subject to the will of people seeking to monopolise remaining resources. This will is likely to be imposed through violence

. Political accountability will be a distant memory. The chances of conserving any resource in these circumstances are approximately zero. The human and ecological consequences of the first global collapse are likely to persist for many generations, perhaps for our species' remaining time on earth. To imagine that good could come of the involuntary failure of industrial civilisation is also to succumb to denial. The answer to your question – what will we learn from this collapse? – is nothing.

This is why, despite everything, I fight on. I am not fighting to sustain economic growth. I am fighting to prevent both initial collapse and the repeated catastrophe that follows. However faint the hopes of engineering a soft landing – an ordered and structured downsizing of the global economy – might be, we must keep this possibility alive. Perhaps we are both in denial: I, because I think the fight is still worth having; you, because you think it isn't.

#### Growth path-dependency and elites block the transition --- default to behavioral psychology.

Hubert BUCH-HANSEN 18. Associate Professor, Department of Business and Politics, Copenhagen Business School. “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy.” *Ecological Economics* 146: 157-63. Emory Libraries.

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

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

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

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

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

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

6. Consent

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

Two issues in particular should be mentioned in this context. First, for many, the anti-capitalist sentiments embodied in the degrowth project will inevitably be a difficult pill to swallow. Today, the vast majority of people find it almost impossible to conceive of a world without capitalism. There is a ‘widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible to even imagine a coherent alternative to it’ (Fisher, 2009: 2). As Jameson (2003) famously observed, it is, in a sense, easier to imagine the end of the world than it is to imagine the end of capitalism

. However, not only is degrowth – like other anti-capitalist projects – up against the challenge that most people consider capitalism the only system that can function; it is also up against the additional challenge that it speaks against economic growth in a world where the desirability of growth is considered common sense.

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

At present, then, the degrowth project is in its “deconstructive phase”, i.e., the phase in which its advocates are able to present a powerful critique of the prevailing neoliberal project and point to alternative solutions to crisis. At this stage, not enough support has been mobilised behind the degrowth project for it to be elevated to the phases of “construction” and “consolidation”. It is conceivable that at some point, enough people will become sufficiently discontent with the existing economic system and push for something radically different. Reasons for doing so could be the failure of the system to satisfy human needs and/or its inability to resolve the multidimensional crisis confronting humanity. Yet, various material and ideational path-dependencies currently stand in the way of such a development, particularly in countries with large middle-classes. Even if it were to happen that the majority wanted a break with the current system, it is far from given that a system based on the ideas of degrowth is what they would demand.

### 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.

#### 4---

#### 6---The DOJ and FTC undermine states.

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

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

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

#### 7---Can’t solve international coop---the DOJ and FTC are key to American antitrust’s global solvency.

**Garza et. al. 07**. Chair of the Antitrust Modernization Commission, a bi-partisan blue ribbon commission created by Congress to advise Congress and the President on the state of U.S. Antitrust law enforcement and former DOJ Antitrust Deputy Assistant Attorney General for Regulatory Affairs. “Antitrust Modernization Commission: Report and Recommendations: Chapter 2,” p. 216-217. Antitrust Modernization Commission. 2/4/2007. https://govinfo.library.unt.edu/amc/report\_recommendation/chapter2.pdf

The Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) **have made extensive efforts** to improve cooperation between the United States and other nations’ antitrust enforcers.26 **Both U.S. antitrust agencies “enjoy [a] strong cooperative relationship**[] with a large and increasing number of foreign enforcement agencies, **enabling close cooperation on cases**, **coordination** on international antitrust policy, and **provision of technical assistance to new agencies around the world**.”27 Whereas U.S. requests for cooperation previously took up to a year to be processed,28 today antitrust agencies worldwide have a “pick up the phone” approach toward sharing information and assisting each other in their antitrust enforcement efforts.29 This high degree of cooperation has facilitated convergence of both procedural and substantive aspects of antitrust law.

The efforts of the U.S. antitrust agencies have been advanced in part **through their participation in** two organizations, **the OECD and the ICN**.30 The OECD was created in 1961 to expand free trade and improve development in member countries.31 As part of these efforts, it created a Competition Law and Policy Committee that provides a variety of means for countries to share their best practices regarding antitrust and competition policy.32 The ICN, in comparison, is relatively new, but has a more broad-based membership. It was created after ICPAC called for the creation of a “Global Competition Initiative” to address antitrust enforcement in a growing globalized economy.33 Membership in the ICN has increased from fourteen jurisdictions when it began in 200134 to ninety-seven members from eighty-five jurisdictions in 2007.35

The ICN and OECD **have promulgated “best practices”** on merger reviews and cartel investigations and **continue to work on convergence of substantive and procedural law**.36 For example, the ICN is currently undertaking a study of unilateral conduct standards with the goal of developing a consensus on the objectives and legal and economic bases of enforcement regarding unilateral conduct.37 The ICN in the past has developed principles of best practices regarding merger notification regimes, with the objective of highlighting the importance of transparency and clarity in each jurisdiction’s rules regarding filing requirements and review.38 Overall, through their efforts, **these institutions have had a meaningful influence in “promoting convergence in antitrust enforcement**”39 **and have contributed to the “significant recent progress in reducing conflicts by increasing cooperation, information sharing, and networking**.”40 Indeed, their successes are reflected at least in part by the fact that the vast majority of international investigations are conducted without incident.41

### Horsetrading DA---TL

#### September thumps

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

Democrats are staring down a nightmare September, a month jam-packed with deadlines and bruising fights over their top priorities.

The numerous legislative challenges in a condensed timeline will test Democratic unity and provide plenty of opportunities for Republicans to lay political traps just a year out from the 2022 midterm elections, where they are feeling increasingly bullish about their chances.

When lawmakers return to Washington, they’ll have to juggle averting a government shutdown in a matter of days with Democrats' self-imposed deadline for advancing an infrastructure and spending package that is at the center of President Biden’s economic and legislative agenda and sparking high-profile divisions.

That’s on top of a looming decision about the debt ceiling, a voting rights clash set to come to the Senate floor in mid-September, lingering Afghanistan fallout and, in the wake of a controversial Supreme Court decision, a heated fight over abortion.

#### No link---it’s only about affs that breakup online platforms. Emory = blue.

1NC Perera 3-12-2021, veteran cybersecurity reporter, Data security & privacy reporter for MLex (Dave, “US antitrust legislation faces uphill battle despite unified Democratic government,” <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government>)

Renewed interest among US lawmakers in antitrust legislation is unlikely to produce radical policy shifts, notwithstanding the Democratic Party’s unified control of the federal government. Democrats promised a “big, bold agenda” after they captured the Senate by a hairsbreadth in January. Democratic lawmakers may very well stick to those ambitions and announce audacious legislative proposals. But the fate of those bills is at the mercy of a political dynamic ensuring that the more liberal the policy prescriptions, the less likely they are to become law. The most likely outcome over the next two years is more funding for enforcers at the Department of Justice and Federal Trade Commission, whether directly through appropriated funds, steeper merger notification filing fees, or both. It’s also possible Congress could incrementally tinker along the edges of antitrust. It might lower the threshold for challenging mergers, or mandate data portability requirements for social media companies. Those expecting — or fearing — more ambitious outcomes likely won’t see them enacted. So until America’s November 2022 election, scratch from the list of high probabilities reforms such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company. Put another way, unless a bill can attract significant Republican support, not even two years of unified Democratic government can guarantee reforms. — American exceptionalism — Single party control of both congressional chambers and the presidency is relatively rare in American politics. It has occurred in fewer than a third of legislative sessions since 1980. When it strikes, it doesn’t last long — typically just the two years between one congressional election and another. Historically, unified control is a fertile period for new regulations. President George W. Bush overhauled Medicare. President Barack Obama ushered in financial sector reforms and the Affordable Care Act. Indications are that President Joe Biden is emboldened by his party’s last-minute capture of the Senate. History, of course, isn’t a blueprint. Even a brief look at past episodes of unified control reveals that not even single-party capture of the executive and legislative branches of the US government can assure the enactment of a partisan agenda. For one thing, neither political party is a monolith. Although far more politically aligned than when Democratic conservatives found common cause in the 20th century with Republicans, the major American parties nonetheless are coalitions of centrist and activist wings. For Democrats, the tensions inherent in appeasing all sides became apparent earlier this month when centrists trimmed benefits in the $1.9 trillion coronavirus stimulus package. Neither is single party grip on power secure unless it commands an overwhelming majority in the Senate, thanks to a uniquely American institution: the filibuster. In the Senate, the rules mandate a three-fifths vote before debate over a bill is cut off. In recent decades, it’s become a weapon routinely wielded by the minority party to kill legislation. The upshot is that policy legislation needs supermajority support before it can proceed, meaning the 50 Democrats of today’s Senate have little choice but to resign themselves to the grind of finding Republican supporters. There are limited exceptions. Assuming Democrats stay in unison, they don’t need Republican votes to appoint judges, approve executive branch nominations or pass fiscal legislation such as the coronavirus stimulus that just became law. It’s within Democrats’ power to abolish the filibuster, but for now, the maneuver appears safe. Asked just days ago about the matter, White House spokeswoman Jen Psaki told reporters that the president’s preference is for it to stay in place. “The president is an optimist by nature,” Psaki added. — Hunting for bipartisan consensus — Not every bill introduced in Congress, nor even every bill approved by a committee or even an entire single chamber, makes it through the process because its sponsors believe it’ll become law. There are a host of bills drafted with the intent of sending a message to industry, to independent regulators, to donors, to constituents. There are bills that lawmakers view as setting out a position to influence an ongoing policy debate. Even if it won’t become law this year, it might the next year, or the next, reintroduced and refined along the way. Telltale signs of whether a bill is a serious attempt at law are the number of cosponsors, and whether that list of names includes members of both parties in good stead with their party’s leadership. Bipartisan support is important even in the House, where Democrats have the votes to completely bypass Republicans. Because the House doesn’t have the filibuster to contend with, those with the majority of seats control the chamber. House Democrats can and do pass bills in the face of absolute House Republican opposition, but — special exceptions for fiscal bills aside — those bills are dead on arrival in the Senate. As long as the filibuster exists or Democrats lack a Senate supermajority, the House Judiciary antitrust subcommittee must court Republican support if its intention is to make new law. Finding clues of what House Democrats might seriously achieve, then, may be little more difficult than looking up the policy prescriptions House Republicans favor: giving regulators more resources, shifting the burden of proof in merger cases and boosting data portability and interoperability. A report issued by now-ranking Republican Ken Buck as a rejoinder to last year’s Democratic House Judiciary antitrust subcommittee staff report on competition in digital markets allowed that the GOP shares other Democratic concerns, including predatory pricing, monopoly leveraging and control over marketplace platforms. That conciliatory signal also came weighted, with warnings that Congress should be wary of “handing additional regulatory to agencies in an attempt to micromanage.” Instead, try instead telling enforcers they should return to first principles, the Colorado lawmaker advised. Whether Republicans and Democrats in the Senate can find common cause is an even more fraught question. Unlike its House counterpart, the Senate Judiciary subcommittee on antitrust hasn't conducted a 16-month investigation into digital monopolization. The subcommittee’s senior Republican, Utah’s Mike Lee, is prone to touting the importance of the consumer welfare standard and rails against online platforms “eager to impose the ideological censorship called for by their political benefactors.” Lee also says he’s open to working with subcommittee Chairwoman Amy Klobuchar on strengthening enforcement, adding the caveat that current antitrust laws are sufficient. Klobuchar, a Minnesota Democrat, doesn’t need Lee to get a bill through her subcommittee, but failing to find consensus with Republicans imperils her chances of making law. The prospects for her Competition and Antitrust Law Enforcement Reform Act becoming law as current written aren't good. — 'Big tech is out to get conservatives' — A looming question hanging over any bill, even one tailored to win bipartisan support, is whether it could be derailed by Republican anger at online platforms for alleged anti-conservative bias. A right-wing trope especially spread by President Donald Trump during his last year in office — the belief that platforms use their content moderation powers to silence conservatives — has mainstream acceptance in Republican circles. It’s a refrain almost obligatory for Republican lawmakers to repeat when discussing any issue related to online platforms. “Big tech is out to get conservatives,” House Judiciary Committee ranking member Jim Jordan of Ohio has said more than once. Democrats have their own share of anger at online platforms’ content-moderation practices, to be sure. They accuse online platforms of circumventing consumer protections, undermining civil rights laws and not doing enough to stymie disinformation. It’s Republicans, though, who appear the angriest, and are the more likely to insist that any legislative reform ***touching online platforms*** address content moderation, with the intention of making it harder, not easier, for online platforms to remove users, potentially imperiling a compromise measure.

#### State action thumps. Emory = blue.

1NC Carpenter 21, contributing writer for The Nation. She received the James Aronson Award for Social Justice Journalism in 2018, and has been a finalist for the Livingston Awards and the National Awards for Education Reporting. Her writing has also appeared in Rolling Stone, Guernica, and various other publications (Zoe, “Misinformation Is Destroying Our Country. Can Anything Rein It In?,” *The Nation*, <https://www.thenation.com/article/society/right-wing-media-misinformation/>)

Natali Fierros Bock says she could feel this mass delusion calcifying in the wake of the election in Pinal County, a rural area between Phoenix and Tucson where she serves as co–executive director of the group Rural Arizona Engagement. “It feels like an existential crisis,” Bock adds. Many of the Sharpiegate claims online referred to Pinal County, and Gosar, whose district includes a portion of the area, was reportedly responsible for helping organize the January 6 “Stop the Steal” rally in Washington that resulted in the deaths of five people. Mark Finchem, a Republican who represents part of Pinal County in the statehouse, was also in Washington on January 6. The Capitol insurrection threw into relief the real-world consequences of America’s increasingly siloed media ecosystem, which is characterized on the right by an expanding web of outlets and platforms willing to entertain an alternative version of reality. Social media companies, confronted with their role in spreading misinformation, scrambled to implement reforms. But right-wing misinformation is not just a technological problem, and it is far from being fixed. Any hope that the events of January 6 might provoke a reckoning within conservative media and the Republican Party has by now evaporated. The GOP remains eager to weaponize misinformation, not only to win elections but also to advance its policy agenda. A prime example is the aggressive effort under way in a number of states to restrict access to the ballot. In Arizona, Republicans have introduced nearly two dozen bills that would make it more difficult to vote, with the big lie about election fraud as a pretext. “When you can sell somebody the idea that their elections were stolen, they’ve been violated, right? So then you need protection,” Bock says, explaining the conservative justification for the suite of new restrictions in her state. Voting rights is her organization’s “number one concern” at the moment. But Bock’s fears about political misinformation are more sweeping. Community organizing is difficult in the best of times. “But when you can’t agree on what is true and not true, when my reality doesn’t match the reality of the person I’m speaking to, it makes it more difficult to find common ground,” she says. “If we can’t agree on a common truth, if we can’t find a starting place, then how does it end?” Around the time of the 2016 election, Kate Starbird, a professor at the University of Washington who studies misinformation during crises, noticed that more and more social media users were incorporating markers of political identity into their online personas—hashtags and memes and other signifiers of their ideological alignment. In the footage from the Capitol she saw the same symbols, outfits, and flags as those she’d been watching spread in far-right communities online. “To see those caricatures come alive in this violent riot or insurrection, whatever you want to call it, was horrifying, but it was all very recognizable for me,” Starbird says. “There was a time in which we were like, ‘Oh, those are bots, those aren’t real people,’ or ‘That’s someone play-acting,’ or ‘We’re putting on our online persona and that doesn’t really reflect who we are in an offline sense.’ January 6 pretty much disabused us of that notion.” It was a particularly rude awakening for social media companies, which had long been reluctant to respond to the misinformation that flourished on their platforms, treating it as an issue of speech that could be divorced from real-world consequences. Facebook, Twitter, and other platforms had made some changes in anticipation of a contested election, announcing plans to label or remove content delegitimizing election results, for instance. Facebook blocked new campaign ads for the week leading up to the election; Twitter labeled hundreds of thousands of misleading tweets with fact-checking notes. Yet wild claims about election fraud spread virally anyway, ping-ponging from individual social media users to right-wing influencers and media. During the 2016 campaign, most public concern about misinformation centered on shadowy foreign actors posing as news sources or US citizens. This turned out to be an oversimplification, though many on the center and left offered it as an explanation for Hillary Clinton’s defeat in 2016; blaming Russian state actors alone ignored factors like sexism, missteps made by the Clinton campaign itself, and the home-grown feedback loop of right-wing media. In 2020, according to research done by Starbird and other contributors to the Election Integrity Project, those most influential in disseminating misinformation were largely verified, “blue check” social media users who were authentic, in the sense that they were who they said they were—Donald Trump, for example, and his adult sons. DONATE NOW TO POWER THE NATION. Readers like you make our independent journalism possible. Another key aspect in the creation of the big lie was what Starbird calls “participatory disinformation.” Trump was tweeting about the election being stolen from him months beforehand, but once voting got under way, “what we see is that he kind of relies on the crowd, the audiences, to create the evidence to fit the frame,” Starbird explains. Individuals posted their personal experiences online, which were shared by more influential accounts and eventually featured in media stories that placed the anecdotes within the broader narrative of a stolen election. Some of the anecdotes that fueled Sharpiegate came from people who used a felt-tip pen to vote in person, then saw online that their vote had been canceled—though the “canceled” vote actually referred to mail-in ballots that voters had requested before deciding to vote in person. “It’s a really powerful kind of propaganda, because the people that were helping to create these narratives really did think they were experiencing fraud,” Starbird says. Action by content moderators usually came too late and was complicated by the fact that many claims of disenfranchisement by individual users were difficult to verify or disprove. The Capitol riot led the tech giants to take more aggressive action against Trump and other peddlers of misinformation. Twitter and Facebook kicked Trump off their platforms and shut down tens of thousands of accounts and pages. Facebook clamped down on some of its groups, which the company’s own data scientists had previously warned were incubating misinformation and “enthusiastic calls for violence,” according to an internal presentation. Google and Apple booted Parler, a social media site used primarily by the far right, from their app stores, and Amazon stopped hosting Parler’s data on its cloud infrastructure system, forcing it temporarily offline. But these measures were largely reactions to harm already done. “Moderation doesn’t reduce the demand for [misleading] content, and demand for that content has grown during some periods of time when the platforms weren’t moderating or weren’t addressing some of the more egregious ways their tools were abused,” says Renée DiResta, technical research manager at the Stanford Internet Observatory. Deplatforming individuals or denying service to companies that tolerate violent rhetoric, as Amazon did with Parler, can have an impact, particularly in the short term and when done at scale. It reduces the reach of influential liars and can make it more difficult for “alt-tech” apps to operate. A notorious example of deplatforming involved Alex Jones, the conspiracy theorist behind the site Infowars. Jones was kicked off Apple, Facebook, YouTube, and Spotify in 2018 for his repeated endorsement of violence. He lost nearly 2.5 million subscribers on YouTube alone, and in the three weeks after his accounts were cut off, Infowars’ daily average visits dropped from close to 1.4 million to 715,000. But Jones didn’t disappear—he migrated to Parler, Gab, and other alt-tech platforms, and he spoke at a rally in Washington the night before the Capitol attack. One outcome of unplugging Trump and other right-wing influencers has been a surge of interest in those alternative social media platforms, where more dangerous echo chambers can form and, in encrypted spaces, be more difficult to monitor. “Isn’t this just going to make the extreme communities worse? Yes,” says Ethan Zuckerman, founder of the Institute for Digital Public Infrastructure at the University of Massachusetts at Amherst. “But we’re already headed there, and at least the good news is that [extremists] aren’t going to be recruiting in these mainstream spaces.” The bad news, in Zuckerman’s view, is that the far right is now leading the effort to create new forms of online community. “The Nazis right now have an incentive to build alternative distributed media, and the rest of us are behind, because we don’t have the incentive to do it,” Zuckerman explains. He argues that a digital infrastructure that is smaller, distributed, and not-for-profit is the path to a better Internet. “And my real deep fear is that we end up ceding the design of this way of building social networks to far-right extremists, because they are the ones who need these new spaces to discuss and organize.” In March, Trump spokesman Jason Miller said on Fox that the former president was likely to return to social media this spring “with his own platform.” A more fundamental problem than Trump’s presence or absence on Twitter is the power that a single executive—Jack Dorsey, in the case of Twitter—has in making that decision. Social media companies have become so big that they have little fear of accountability in the form of competition. “To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” concluded a recent report by the staff of the Democratic members of the House Judiciary Subcommittee on Antitrust. For now, the reforms at Facebook and other companies remain largely superficial. The platforms are still based on algorithms that reward outrageous content and are still financed via the collection and sale of user data. Karen Hao of MIT Technology Review recently reported that a former Facebook AI researcher told her “his team conducted ‘study after study’ confirming the same basic idea: models that maximize engagement increase polarization.” Hao’s investigation concluded that Facebook leadership’s relentless pursuit of growth “repeatedly weakened or halted many initiatives meant to clean up misinformation on the platform.” The modest “break glass” measures Facebook took during the election in response to the swell of misinformation, which included tweaks to its ranking algorithm to emphasize news sources it considered “authoritative,” have already been reversed. Tech companies could do more, as the election-time tweaks revealed. But they still “refuse to see misinformation as a core feature of their product,” says Joan Donovan, research director for the Shorenstein Center on Media, Politics and Public Policy at Harvard University. The problem of misinformation appears so vast “because that’s exactly what the technology allows.” There are some signs of a growing appetite for regulation on Capitol Hill. Democrats have proposed reforms to Section 230 of the Communications Decency Act, which insulates tech companies from legal liability for content posted to their platforms, such as requiring more transparency about content moderation and opening platforms to lawsuits in limited circumstances when content causes real-world harm. (GOP critiques of Section 230, on the other hand, make the false argument that it allows platforms to discriminate against conservatives.) Another legislative tactic would focus on the algorithms that platforms use to amplify content, rather than on the content itself. A bill introduced by two House Democrats would make companies liable if their algorithms promote content linked to acts of violence. Democratic lawmakers are also eyeing changes to antitrust law, while several antitrust lawsuits have been filed against Facebook and Google. But litigation could take years. Even breaking up Big Tech would leave intact its predatory business model. To address this, Zuckerman and other experts have called for a tax on targeted digital advertising. Such a tax would discourage targeted advertising, and the revenue could be used to fund public-service media. Held to account? Twitter CEO Jack Dorsey testified remotely before the Senate Judiciary Committee in November 2020. (Matt York / AP) Social media plays a key role in amplifying conspiracy theories and political misinformation, but it didn’t create them. “When we think of disinformation as something that appeared [only in the Trump era], and that we used to have this agreed-upon narrative of what was true and then social platforms came into the picture and now that’s all fragmented… that makes a lot of assumptions about the idea that everyone used to agree on what was true and what was false,” says Alice E. Marwick, an assistant professor at the University of North Carolina who studies social media and society. Politicians have long leveraged misinformation, particularly racist tropes. But it’s been made particularly potent not just by social media, Marwick argues, but by the right-wing media industry that profits from lies. “The American online public sphere is a shambles because it was grafted onto a television and radio public sphere that was already deeply broken,” argue Yochai Benkler, Robert Faris, and Hal Roberts of Harvard’s Berkman Klein Center for Internet and Society in their book Network Propaganda. The collapse of local news left a vacuum that for many Americans has been filled by partisan outlets that, on the right, are characterized by blatant disregard for journalistic standards of sourcing and verification. This insulated world of right-wing outlets, which stretches from those that bill themselves as objective sources, Fox News chief among them, to talk radio and extreme sites like Infowars and The Gateway Pundit, “represents a radicalization of roughly a third of the American media system,” the authors write. The conservative movement spent decades building this apparatus to peddle lies and fear along with miracle cures and pyramid schemes, and was so successful that Fox and other far-right outlets ended up in a tight two-step with the White House. Fox chairman Rupert Murdoch maintained a close relationship with Trump, as did Sean Hannity and former Fox News copresident Bill Shine, who became White House communications director in 2018. The backlash against Fox in the wake of the election hinted at a possible dethroning of the ruler of the right’s media machine. Its farther-right rival Newsmax TV posted a higher rating than Fox for the first time ever in the month after the election, following supportive tweets from Trump, and during the week of November 9 it passed Breitbart as the most-visited conservative website. But Fox quickly regained its perch. The network backpedaled rapidly during its post-election ratings slump, firing an editor who’d defended the projection of a Biden win in Arizona and replacing news programming with opinion content. According to Media Matters, Fox News pushed the idea of a stolen election nearly 800 times in the two weeks after declaring Biden the winner. The network’s ad revenue increased 31 percent during the final quarter of 2020, while its parent company, Fox Corporation, saw a 17 percent jump in pretax profit. The far-right media ecosystem has become so powerful in part because there’s been no downside to lying. Instead, the Trump administration demonstrated that there was a market opportunity in serving up misinformation that purports to back up what people want to believe. “In this day and age, people want something that tends to affirm their views and opinions,” Newsmax CEO Chris Ruddy told The New York Times’ Ben Smith in an interview published shortly after the election. Claims of a rigged election were “great for news,” he said in another interview. Trump’s departure from the White House won’t necessarily reduce the demand for this kind of content. Since the Capitol riot, two voting-systems companies have launched an unusual effort to hold right-wing outlets and influencers accountable for some of the lies they’ve spread. Dominion Voting Systems, a major provider of voting technology, and another company called Smartmatic were the subjects of myriad outlandish claims related to election fraud, many of which were used in lawsuits filed by Trump’s campaign and were repeatedly broadcast on Fox, Newsmax TV, and OAN. Since January the companies have filed several defamation suits against Trump campaign lawyers Sidney Powell and Rudy Giuliani, MyPillow CEO Mike Lindell, and Fox News and three of its hosts. Dominion alleges that as a result of false accusations, its “founder and employees have been harassed and have received death threats, and Dominion has suffered unprecedented and irreparable harm.” The threat of legal action forced a number of media companies to issue corrections for stories about supposed election meddling that mentioned Dominion. The conservative website American Thinker published a statement admitting its stories about Dominion were “completely false and have no basis in fact” and “rel[ied] on discredited sources who have peddled debunked theories.” OAN simply deleted all of the stories about Dominion from its website without comment. These lawsuits will not dismantle the world of right-wing media, but they have prompted a more robust debate about how media and social media companies could be held liable for lies that turn lethal—and whether this type of legal action should be pursued, given the protections afforded by the First Amendment and the fact that the powerful often use libel law to bully journalists. Alternative reality: Trump supporters in Maricopa County derided Fox for reporting on election night that Biden had won the state. (Hannah McKay / Pool / Getty Images) Ethan Zuckerman has been thinking about how to build a better Internet for years, a preoccupation not unrelated to the fact that, in the 1990s, he wrote the code that created pop-up ads. (“I’m sorry. Our intentions were good,” he wrote in 2014.) Still, he believes that framing misinformation as a problem of media and technology is myopic. “It’s very hard to conclude that this is purely an informational problem,” Zuckerman says. “It’s a power problem.” The GOP is increasingly tolerant of, and even reliant on, weaponized misinformation. “We’re in a place where the Republican Party realizes that as much as 70 percent of their voters don’t believe that Biden was legitimately elected

, and they are now deeply reluctant to contradict what their voters believe,” Zuckerman says. Republicans are reluctant, at least in part, because of a legitimate fear of primary challenges from the right, but also because they learned from Trump the power of using conspiracy theories to mobilize alienated voters by preying on their deep mistrust of public institutions. It’s one thing for an ordinary citizen to retweet a false claim; it’s another for elected officials to legitimize conspiracy theories. But holding the GOP to account may prove to be even harder than reforming Big Tech. The radical grass roots have been empowered by small-dollar fundraising and gerrymandering, while more moderate Republicans are retiring or leaving the party. Writer Erick Trickey argued recently in The Washington Post that what undercut a similar wave of conservative crackpot paranoia driven by the John Birch Society in the 1960s was explicit denunciation by prominent conservatives like William Buckley and Ronald Reagan as well as Republican congressional leaders. But today’s party leaders have been unwilling to excommunicate conspiracy-mongers. In the aftermath of the Capitol riot, elected officials who spread rumors that the violence was actually the result of antifascists—including Arizona’s Paul Gosar and Andy Biggs—gained notoriety, while those critical of Trump were publicly humiliated. The embrace of conspiratorial narratives has been particularly pronounced in state GOP organizations. The Texas GOP recently incorporated the QAnon slogan “We are the storm” into official publicity media, and the Oregon GOP’s executive committee endorsed the theory that the riot had been a “false flag” operation. In March, members of the Oregon GOP voted to replace its Trump-supporting chairman with a candidate even farther out on the extremist fringe. Weaponized misinformation could have a lasting impact not only on the shape of the GOP but also on public policy. Republicans are now using the big lie to try to restrict voting rights in Arizona, Georgia, and dozens of other states. As of February 19, according to the Brennan Center for Justice, lawmakers in 43 states had introduced more than 250 bills restricting access to voting, “over seven times the number of restrictive bills as compared to roughly this time last year.” In late March, Georgia Governor Brian Kemp signed a 95-page bill making it harder to vote in that state in a number of ways. Many of the far-right extremists, politicians, and media influencers who spread misinformation about the presidential election are now pushing falsehoods about Covid-19 vaccines. The rumors, which have spread on social media apps like Telegram that are frequented by QAnon adherents and militia groups, among others, range from standard anti-vax talking points to absurd claims that the vaccines are part of a secret plan hatched by Bill Gates to implant trackable microchips, or that they cause infertility or alter human DNA. Sidestepping the craziest conspiracies, prominent conservatives like Tucker Carlson and Wisconsin Senator Ron Johnson, who has become one of the GOP’s leading purveyors of misinformation, are casting doubt about vaccine safety under the pretense of “just asking questions.” Vaccine misinformation plays into the longstanding conservative effort to sow mistrust in government, and it appears to be having an effect: A third of Republicans now say they don’t want to get vaccinated. These are the true costs of misinformation: deadly riots, policy changes that could disenfranchise legitimate voters, scores of preventable deaths. These translate into financial externalities: the additional expense of securing the Capitol, additional dollars devoted to the pandemic response. More abstract but no less real are the social costs: the parents lost down QAnon rabbit holes, the erosion of factual foundations that permit productive argument. The problem with the far right’s universe of “alternative facts” is not that it’s hermetically sealed from the universe the rest of us live in. Rather, it’s that these universes cannot truly be separated. If we’ve learned anything in the past six months, it’s that epistemological distance doesn’t prevent collisions in the real world that can be lethal to individuals—and potentially ruinous for democratic systems.

## T

### Substantially

#### Substantial is arbitrary---even 1% is topical.

Richard B. Blackwell 72. “Section 7 of the Clayton Act: Its Application to the Conglomerate Merger.” 13 Wm. & Mary L. Rev. 623 (1972). https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2684&context=wmlr

The Effect May Be Substantially to Lessen Competition

As is plain from the language of this clause, the thrust of section 7 is preventive and not remedial. Its purpose is to reverse potential restraints of trade in their incipiency, and thereby avert the often disastrous consequences of dismantling a fully-integrated acquisition. Accordingly, it has been held that the Government need not establish the certainty that a restraint of trade will result from a given acquisition, but only a "reasonable probability" that such will be the effect."

Perhaps the most troublesome element of the statute has been the requirement of a "substantial" lessening of competition. Initially, the test for measuring the degree of anticompetitive effect depends upon the type of merger involved. Thus the legality of a horizontal merger will hinge on the resultant increase in market power of the merged firm, whereas in the case of a vertical merger, the standard criterion is the degree of foreclosure to competitors of the market of the acquired firm. Most conglomerate mergers have horizontal or vertical components, and to that extent are treated as horizontal or vertical mergers when measuring their anticompetitive effects. The pure conglomerate or diversification merger cannot be indexed on a straight market percentage basis-the standards for determining its legality are discussed in detail in the following section.

Within these indices of measurement, the term "substantially" has been variously interpreted. Several decisions illustrate the extreme limits of its definition. As respects horizontal mergers, the Supreme Court has intimated in United States v. Pabst Bre'wing Co.u that a merger of two breweries supplying an aggregated 4.49 percent of the national beer market would result in a substantial lessening of competition in that market. 36 A trend toward increased concentration was detected, rendering the market more sensitive to further horizontal amalgamation.37

The Court has held that a vertical merger which would foreclose one percent of the acquired firm's market would substantially lessen competition in a market characterized by vertical integration. 8

## K

### Sustainnablit

#### Financial reforms insulate the potential collapse of the financial sector from the rest of the economy.

Michael S. Barr 17. Professor of Law at the University of Michigan. “Financial Reform: Making the System Safer and Fairer” University of Michigan Law School Scholarship Repository. 1-2017. https://repository.law.umich.edu/articles/1909/

Overview of Reforms

In the United States, passage of the DoddFrank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) ushered in comprehensive reform in key areas: enlarging the regulatory perimeter by creating the authority to regulate financial firms that pose a threat to financial stability, without regard to their corporate form; enacting a resolution authority to deal with the potential collapse of these major firms in the event of a crisis, without feeding a panic or putting taxpayers on the hook; attacking regulatory arbitrage, restricting risky activities, and beefing up banking supervision; requiring central clearing and exchange trading of standardized derivatives, and capital, margin and transparency throughout the market; improving investor protections; and establishing a new Consumer Financial Protection Bureau to look out for the interests of American households.

Today, major financial firms are subject to higher prudential standards, including higher capital and liquidity requirements, stress tests, and resolution planning through “living wills.” By forcing firms to internalize more of the costs that they impose on the system, they will be incentivized to shrink and reduce their complexity, leverage, and interconnections. Should such a firm fail, there will be a bigger capital buffer to absorb losses. To stem a panic, the Dodd-Frank Act permits the Federal Deposit Insurance Corporation (FDIC) to resolve the largest and most interconnected financial companies without exposing the system to a sudden, disorderly failure that puts the economy at risk.

On the global level, the international community has put forward new rules on capital, so that there are bigger buffers in the system in the event of failures. Capital will be measured in a more conservative way, and capital levels are going up significantly. Systemically important firms will hold even higher levels of capital. There are new rules on liquidity and a global leverage limit. Derivatives reforms are proceeding, as are new approaches to dealing with the risks from repo and securities financing transactions.

Yet much more work remains to be done, and the financial sector did not leave the battlefield after their defeats in 2010. Far from it. The brutal fight over financial reform rages on, and there is serious risk that a collective amnesia about the causes and consequences of the financial crisis appears to be descending on global financial capitals that will further weaken the resolve for reform (See, for example, Coffee 2011, 2012).

Comparing U.S. Financial Regulation Pre-­Crisis and Post-Reform

Many readers may be skeptical regarding the efficacy of the reforms that have taken place thus far, either because they think they did not change the system enough, or because they think that they went too far. The following section takes the time to chart the path of reform so far, before turning to the difficulties and dangers on the road ahead.

First, before Dodd-Frank, if an entity was a bank, it had tougher regulations, more stringent capital requirements, and more robust supervision; but if an entity was an investment bank engaged in the same kind of maturity transformation, it had to abide by different rules (see Scott 2010). When U.S. investment banks needed to find a “consolidated holding company regulator” in order to meet European Union standards for doing business in Europe, the Securities and Exchange Commission set up a voluntary Consolidated Supervised Entity program which had little oversight. The SEC was not established as a prudential regulator, did not have clear supervisory power, and had little experience and few trained examiners. Moreover, the leverage ratio that served as a backstop for bank capital requirements was not applied to investment banks.

The Federal Reserve was too lax in supervising firms where it did have authority and it did not have any authority to set and enforce capital requirements on the major institutions that operated businesses outside of bank holding companies. That meant it had no supervision over investment banks, diversified financial institutions such as AIG, or the nonbank financial companies competing with banks in the mortgage, consumer credit, and business lending markets. The Office of Thrift Supervision viewed its role as supervising thrifts, not their holding companies (such as AIG). Banks and thrifts freely engaged in risky mortgage lending, and regulators did not step in until it was too late.

Today, Dodd-Frank has provided authority for clear, strong and consolidated supervision and regulation by the Federal Reserve of any financial firm—regardless of legal form— whose failure could pose a threat to financial stability. The largest investment banks that survived the financial crisis merged into or became bank holding companies subject to Fed oversight. AIG, GE Capital, Prudential, and MetLife have now been brought under Fed supervision through the Financial Stability Oversight Council (FSOC) designation. As a result of Dodd-Frank changes, thrift holding companies (including those with large insurance operations) are now supervised by the Fed. The Office of Thrift Supervision and the SEC’s investment bank regime have been abolished. Thus, all bank and thrift holding companies, as well as systemically important nonbank firms, regardless of corporate form, are supervised by the Federal Reserve. We will have a single point of accountability for tougher and more consistent supervision of the largest and most interconnected financial firms.

Although the regulatory infrastructure is, to put it mildly, far from ideal, with too many divided responsibilities and too many opportunities for turf battles or regulatory gaps, DoddFrank created the FSOC, which is responsible for identifying threats to financial stability and dealing with them. The FSOC can recommend stricter regulatory action, and regulators must either implement such changes or explain publicly why they are not acting (see Gerson 2013). Already, this process has led the SEC to impose stricter regulation of money market funds than would otherwise have occurred (Barr 2015a). The FSOC has the potential to get information across the financial services marketplace through the Office of Financial Research (OFR), which Dodd-Frank established and empowered to collect data from any financial firm, and to develop and enforce standardization for data collection. The OFR has begun to use this authority by developing a “legal entity identi fier” for financial transactions. The OFR is charged with independently assessing risks in the financial system, and can potentially serve as a counterweight to the Fed by providing independent assessments of whether the Fed is adequately supervising the largest firms and dealing with the critical issues in systemic risk. A strong OFR can serve as a check and balance for regulatory agencies, ensuring that they improve their own performance or risk being criticized (Ludwig 2012; Barr 2015a).

Dodd-Frank provides for more stringent prudential standards and higher capital and liquidity standards for the largest bank and nonbank firms. In addition to the heightened capital requirements applicable to all firms, the largest firms are subject to a capital surcharge, a leverage ratio, a toughened supplemental leverage ratio, a more stringent liquidity requirement, and capital required to pass stress tests.

Already, capital levels in the banking system have doubled, and banks’ use of short-term nondeposit funding has plummeted. The annual stress tests are evaluating a firm’s ability to withstand deep market contractions.\

There are enhanced rules on affiliate transactions and lending limits, and much stricter proposed limits on counterparty credit exposures. Deposit insurance premiums are going up on the very largest firms. The Volcker Rule prohibits banking entities from engaging in certain proprietary trading or running internal hedge funds, subject to a number of exceptions, and also helps to simplify the task of winding down major firms that are at risk of failure. Moreover, the Fed is using macro-prudential supervision as it increases its capacity to understand and mitigate risks to the financial system as a whole.

There is a healthy debate about breaking up or limiting the size of financial firms. Under the Dodd-Frank Act, major firms are subject to a concentration limit that generally prohibits a financial company from engaging in mergers or acquisitions that would result in the firm’s liabilities—including wholesale funding and off-balance sheet exposures—exceeding 10 percent of the liabilities of financial companies as a whole. Dodd-Frank provides regulators with the authority to require financial institutions to restructure their activities to make it credible that they can be resolved if they are in danger of collapse; the resolution planning process has already forced firms to begin to simplify their organization form, develop “clean” holding companies, and place large amounts of capital and long-term debt in the holding company to assist with the resolution. The act also permits regulators to force firms to be broken up if they fail to submit a credible plan and thereafter fail to meet regulators’ requirements to restructure themselves to make resolution credible. Such firms can also be broken up if they are found to pose a grave threat to financial stability. These enhanced prudential measures for major financial firms are likely to reduce risk in the financial system, constrain further concentration, and reduce “too big to fail” distortions.

Second, before Dodd-Frank, shadow banking markets grew dramatically with little oversight and in the absence of even regulatory or marketwide knowledge about the nature of the markets they were serving. For example, the OTC derivatives market—with a notional amount of $700 trillion at its peak—grew up in the shadows, with little oversight. Credit derivatives, which were supposed to diffuse risk, instead concentrated it. Synthetic securitization with embedded derivatives magnified failures in the real securitization market. Major financial firms used derivatives to increase their credit exposure to each other, rather than decrease it.

We should never again face a situation— such as AIG’s $2 trillion derivatives portfolio— where the potential failure of a virtually unregulated, capital-deficient major player in the derivatives market can impose devastating risks on the entire system. Insufficient capital meant that major participants in the system could not reliably pay out on their obligations, and insufficient margin meant that counterparties on every transaction were more exposed to the risk of nonpayment. When the crisis began, regulators, financial firms, and investors had an insufficient understanding of the degree to which trouble at one firm spelled trouble for another, because of the opacity of the market. This lack of information magnified the contagion as the crisis intensified, causing a damaging wave of margin increases, deleveraging, and credit market breakdowns. Lack of transparency, insufficient supervision, and inadequate capital and margin left our financial system vulnerable to concentrations of risk, and to abuse.